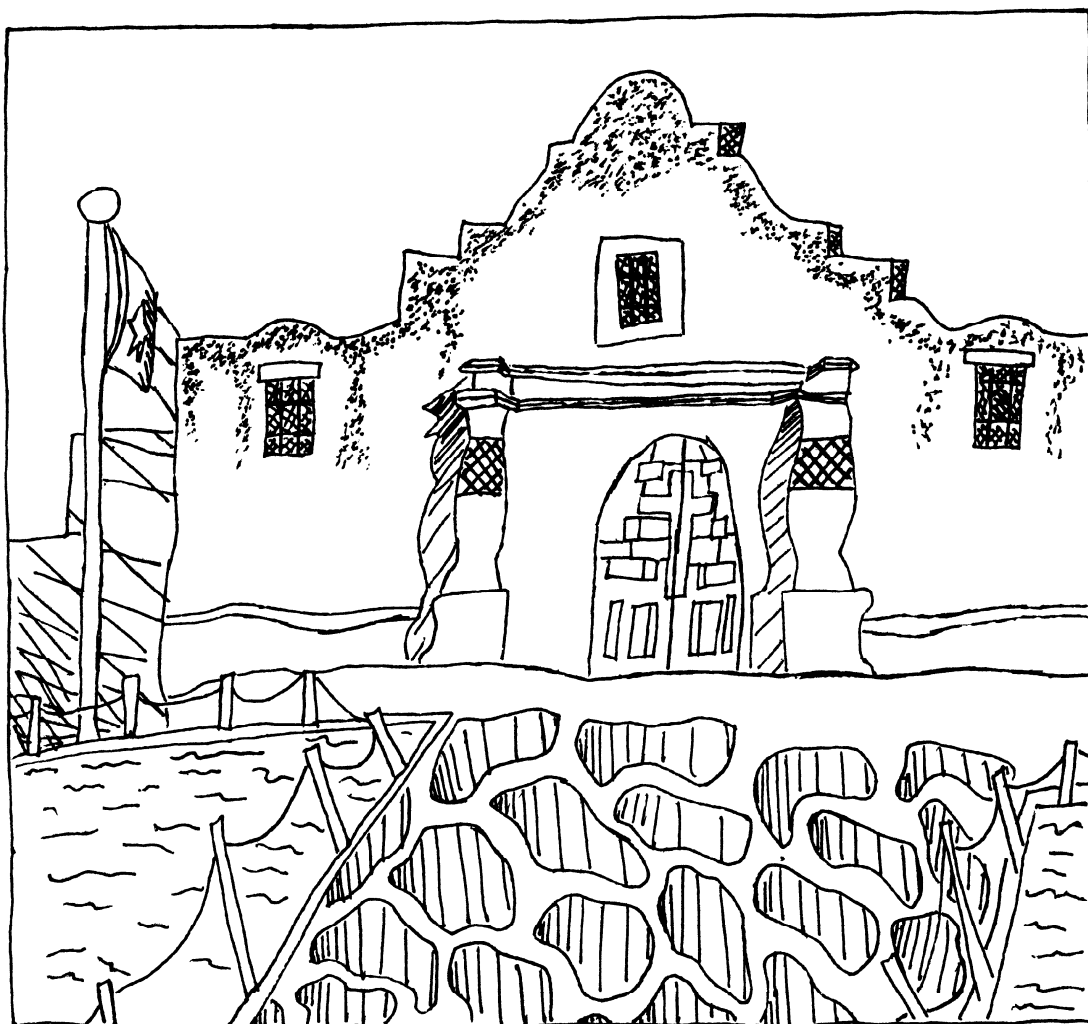

TEXAS REGISTER

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Jaime Vela

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 11, 2009

Designating William Strawn as presiding officer of the Judicial Compensation Commission for a term at the pleasure of the Governor. Mr. Strawn is replacing Elizabeth Whitaker of Dallas as presiding officer.

Appointed to the Committee on Licensing Standards for a term to expire February 1, 2011, Tivy L. Whitlock of Mico (replacing LeCresha Peters of Pearland whose term expired).

Appointed to the Committee on Licensing Standards for a term to expire February 1, 2011, Dan Adams, Jr. of Amarillo (Mr. Adams is being reappointed).

Appointed to the Committee on Licensing Standards for a term to expire February 1, 2011, Karyn Purvis of Fort Worth (Dr. Purvis is being reappointed).

Appointed to be a member of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2015, John C. Dickerson, III of Bay City (Mr. Dickerson is being reappointed).

Appointed to be a member of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2015, Lori A. Berger of Flatonia (replacing Katura Carlton of LaGrange whose term expired).

Appointed to be a member of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2015, Richard "Dick" Scott of Wimberley (replacing Lucy Wilke of Kerrville whose term expired).

Appointed to be a member of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2015, Michael G. McHenry of San Saba (replacing Clayborne Nettleship of San Saba whose term expired).

Appointed to be a member of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2015, Vernon E. "Buddy" Schrader of Horseshoe Bay (replacing Walter Garrett of Wharton whose term expired).

Appointed to be a member of the Texas Workforce Commission for a term to expire February 1, 2015, Thomas W. Pauken of Dallas. Mr. Pauken is being reappointed.

Appointed to be the Public Counsel for the Office of Public Insurance Counsel for a term to expire February 1, 2011, Deeia Denise Beck of Fort Worth. Ms. Beck is being reappointed.

Appointed to be a member of the Manufactured Housing Board for a term to expire January 31, 2015, Sheila Valles-Pankratz of Mission. Ms. Valles-Pankratz is being reappointed.

Appointed to be a member of the Office of Public Utility Counsel for a term to expire February 1, 2011, Joel Don Ballard of Austin. Mr. Ballard is being reappointed.

Appointed to be a member of the Texas A&M University System Board of Regents for a term to expire February 1, 2015, James Schwertner, Jr. of Austin (replacing John White of Houston whose term expired).

Appointed to be a member of the Texas A&M University System Board of Regents for a term to expire February 1, 2015, Phillip Adams of Bryan (replacing Erle Nye of Dallas whose term expired).

Appointed to be a member of the Texas A&M University System Board of Regents for a term to expire February 1, 2015, Bill Jones of Austin (Mr. Jones is being reappointed).

Appointed to be a member of the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2015, Michael D. Schultz of Fair Oaks Ranch (replacing Margaret Grier of Boerne whose term expired).

Appointed to be a member of the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2015, Clifton L. Thomas, Jr. of Victoria (Mr. Thomas is being reappointed).

Appointed to be a member of the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2015, Grace G. Kunde of Sequin (Ms. Kunde is being reappointed).

Appointed to be a member of the Texas Tech University System Board of Regents for a term to expire January 31, 2015, Nancy R. Neal of Lubbock (replacing F. Scott Dueser of Abilene whose term expired).

Appointed to be a member of the Texas Tech University System Board of Regents for a term to expire January 31, 2015, Mickey L. Long of Midland (replacing Bob Stafford of Amarillo whose term expired).

Appointed to be a member of the Texas Tech University System Board of Regents for a term to expire January 31, 2015, John T. Huffaker of Amarillo (replacing Windy Sitton of Lubbock whose term expired).

Appointed to be a member of the Texas State University System Board of Regents for a term to expire February 1, 2015, James David Montagne of Beaumont (replacing Bernie Francis of Carrollton whose term expired).

Appointed to be a member of the Texas State University System Board of Regents for a term to expire February 1, 2015, Ron Mitchell of Horseshoe Bay (replacing John Dudley of Comanche whose term expired).

Appointed to be a member of the Texas State University System Board of Regents for a term to expire February 1, 2015, Kevin J. Lilly of Houston (replacing Dora Alcala of Del Rio whose term expired).

Appointed to be the Texas Youth Commission Independent Ombudsman for a term to expire February 1, 2011, William Harrell of Austin (pursuant to SB 103, 80th Legislature, Regular Session)

Appointed to be a member of the Texas Funeral Services Commission for a term to expire February 1, 2015, Sue Evenwel of Mt. Pleasant (Ms. Evenwel is being reappointed).

Appointed to be a member of the Texas Funeral Services Commission for a term to expire February 1, 2015, Elwynn Gene Allen of Kerrville (replacing Laurens Fish of Austin whose term expired).

Appointed to be a member of the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2015, R. Neal Wilkins of College Station (reappointed).

Appointed to be a member of the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2015, Daniel Dierschke of Austin (reappointed).

Appointed to be a member of the Evergreen Underground Water Conservation District for a term to expire February 1, 2013, Darrell T. Brownlow of Floresville. Dr. Brownlow is being reappointed.

Appointed to be a member of the Texas Historical Commission for a term to expire February 1, 2015, Sheri Krause of Austin (replacing Bob Bowman of Lufkin whose term expired).

Appointed to be a member of the Texas Historical Commission for a term to expire February 1, 2015, L. Kirk Courson of Perryton (replacing Steve Tomka of San Antonio whose term expired).

Appointed to be a member of the Texas Historical Commission for a term to expire February 1, 2015, Nancy M. Steves of San Antonio (replacing Albert Hausser of San Antonio whose term expired).

Appointed to be a member of the Texas Historical Commission for a term to expire February 1, 2015, Steven Highlander of Austin (replacing John Nau of Houston whose term expired).

Appointed to be a member of the Texas Historical Commission for a term to expire February 1, 2015, Thomas E. Alexander of Kerrville (Mr. Alexander is being reappointed).

Rick Perry, Governor

TRD-200900602



Appointments

Appointments for February 13, 2009

Appointed to be a member of the Board of Pardons and Paroles for a term to expire February 1, 2015, Shanda G. Perkins of Burleson (replacing Jose Aliseda of Beeville whose term expired).

Appointed to be a member of the Board of Pardons and Paroles for a term to expire February 1, 2015, Rissie L. Owens of Huntsville (Ms. Owens is being reappointed).

Appointed to be a member of the Board of Pardons and Paroles for a term to expire February 1, 2015, Juanita M. Gonzalez of Round Rock (Ms. Gonzalez is being reappointed).

Appointed to be a member of the Telecommunications Planning and Oversight Council for a term to expire August 31, 2009, Dennis M. Donelson of San Antonio. Mr. Donelson is replacing Robert Frost of Georgetown whose term expired.

Appointed to be a member of the State Pension Review Board for a term to expire January 31, 2013, Andrew Cable of Wimberley. Mr. Cable is replacing Roy Casanova of San Antonio whose term expired.

Appointed to be a member of the University of Texas System Board of Regents for a term to expire February 1, 2011, Robert Steven Hicks of Austin (replacing Robert Rowling of Dallas who resigned).

Appointed to be a member of the University of Texas System Board of Regents for a term to expire February 1, 2015, William Eugene Powell of San Antonio (replacing H. Scott Caven, Jr. of Houston whose term expired).

Appointed to be a member of the University of Texas System Board of Regents for a term to expire February 1, 2015, Robert Lee Stillwell of Houston (replacing John Barnhill of Brenham whose term expired).

Appointed to be a member of the University of Texas System Board of Regents for a term to expire February 1, 2015, James R. Huffines of Austin (Mr. Huffines is being reappointed).

Rick Perry, Governor

TRD-200900690



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 217. PROCUREMENT OF INFORMATION RESOURCES

The Department of Information Resources (department) proposes new Chapter 217, §§217.1 - 217.3, 217.10, 217.11, 217.30 and 217.31. These rules are promulgated to implement §361.965, Texas Health and Safety Code, State Procurement Requirements related to Computer Recycling Programs, §2054.121, Texas Government Code, which requires the adoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act. The rules are structured into three subchapters. Subchapter A, §217.1 - 217.3 are definitions. Subchapter B, §217.10, and §217.11 contain the rules that apply only to state agencies. Subchapter C, §217.30 and §217.31, contain the rules that apply only to institutions of higher education.

The rules being proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and found to have no impact on the mission of higher education, student populations, and federal grant requirements. Alternate methods of implementation of this policy were considered to achieve the purpose of the rules and no alternates were found. The department did consider exempting institutions of higher education from all or part of the requirements of the rules.

Ms. Sherri Parks, Director of the Contracting and Procurement Services Division for the department, has determined that for each year of the first five years there will be no fiscal implications for state or local government.

Ms. Parks has also determined that the public will benefit by the adoption by being consistent with the consumer recycling program that is run by the Texas Commission on Environmental Quality. These rules apply that program to state spending on computers. In the extent that the legislature has found recycling of computers to be a public benefit, these rules make the recycling program bigger.

Ms. Parks believes there will be no different effect on small businesses than there is on large businesses and that there is no additional anticipated economic cost to persons if the rules are adopted.

Comments on proposed new Chapter 217 may be submitted to Cynthia J. Kreider, Attorney, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711,

or electronically to cynthia.kreider@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days after publication.

SUBCHAPTER A. DEFINITIONS

1 TAC §§217.1 - 217.3

The rules are proposed under §361.965, Texas Health and Safety Code, §2054.121 and §2054.052(a), Texas Government Code.

No other statutes, articles, or codes are affected by these rules.

§217.1. Key Terms for Procurement of Information Resources.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Computer Equipment--a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

(2) Department--The Department of Information Resources.

(3) Manufacturer--a person:
(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture Computer Equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold Computer Equipment manufactured by others under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture Computer Equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured Computer Equipment without affixing a brand;

(D) who manufactures or manufactured Computer Equipment to which the person affixes or affixed a brand that:

(i) the person does not or has not owned; or

(ii) the person is not or was not licensed to use; or

(E) who imports or imported computer equipment manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the Computer Equipment to the importer has or had assets or a presence in the United States sufficient to be considered the Manufacturer.

§217.2. Institution of Higher Education.

A university system or institution of higher education as defined by §61.003, Texas Education Code.

§217.3. State Agency.

A department, commission, board, office, or other agency that is in the executive or legislative branch of state government and that was created by the constitution or a statute, excluding an institution of higher education as defined by §61.003, Texas Education Code; or the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council or another agency in the judicial branch of state government.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900607

Renee Mauzy

General Counsel

Department of Information Resources

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 463-6124



SUBCHAPTER B. STATE AGENCY PROCUREMENTS OF COMPUTER EQUIPMENT

1 TAC §217.10, §217.11

The rules are proposed under §361.965, Texas Health and Safety Code, §2054.121 and §2054.052(a), Texas Government Code.

No other statutes, articles or codes are affected by these rules.

§217.10. Bidder Certification Required for Bidding on Computer Equipment.

(a) A public solicitation for the purchase or lease of Computer Equipment issued by the Department or another state agency, after compliance with Chapter 212 of this title (relating to Purchases of Commodity Items), is required to contain the following certification to be completed by bidders, including Manufacturers and resellers: Bidder hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC Chapter 328.

(b) Failure of a bidder to provide this certification shall render the bidder ineligible to participate in the bidding. The Department or other state agency shall reject the related bid and not evaluate it.

(c) Each state agency that solicits bids or proposals from the public for the purchase and/or lease of Computer Equipment must do so in accordance with applicable rules adopted by the Comptroller of Public Accounts pertaining to competitive bidding or competitive sealed proposals.

§217.11. Computer Recycling Preference.

The Department or a state agency, after compliance with Chapter 212 of this title (relating to Purchases of Commodity Items), shall include in all bids for the purchase or lease of Computer Equipment a special preference for all Manufacturers that have a program to recycle the Computer Equipment of other Manufacturers, which program includes collection events and Manufacturer initiatives to accept Computer Equipment labeled with another Manufacturer's brand. The preference may

take the form of extra evaluation points or be the tie-breaking factor among equal bids.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900608

Renee Mauzy

General Counsel

Department of Information Resources

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 463-6124



SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION PROCUREMENTS OF COMPUTER EQUIPMENT

1 TAC §217.30, §217.31

The rules are proposed under §361.965, Texas Health and Safety Code, §2054.121 and §2054.052(a), Texas Government Code.

No other statutes, articles or codes are affected by these rules.

§217.30. Bidder Certification Required for Bidding on Computer Equipment.

(a) A public solicitation for the purchase or lease of Computer Equipment issued by an institution of higher education is required to contain the following certification to be completed by bidders, including Manufacturers and resellers: Bidder hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC Chapter 328.

(b) Failure of a bidder to provide this certification shall render the bidder ineligible to participate in the bidding. The institution of higher education shall reject the related bid and not evaluate it.

(c) Each institution of higher education that solicits bids or proposals from the public for the Purchase and/or lease of Computer Equipment must do so in accordance with applicable rules adopted by the Comptroller of Public Accounts pertaining to competitive bidding or competitive sealed proposals.

§217.31. Computer Recycling Preference.

All institutions of higher education shall include in all bids for the purchase or lease of Computer Equipment a special preference for all Manufacturers that have a program to recycle the Computer Equipment of other Manufacturers, which program includes collection events and Manufacturer initiatives to accept Computer Equipment labeled with another Manufacturer's brand. The preference may take the form of extra evaluation points or be the tie-breaking factor among equal bids.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Renee Mauzy
General Counsel
Department of Information Resources
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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.208

The Credit Union Commission (Commission) withdraws the new §91.208, Notice of Known or Suspected Criminal Violations, which was published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9025). The Commission re-proposes the new rule with additional changes to address concerns raised after the conclusion of the comment period. The new rule carves out from existing §91.209 the requirement that a credit union notify the Credit Union Department (Department) of any known or suspected criminal violation. The separate rule makes the requirement more visible to credit unions, spells out in greater detail the method for reporting and the types of violations that must be reported to the Department, and clarifies when a credit union may submit a Suspicious Activity Report to fulfill the reporting requirement.

The new rule is withdrawn, amended, and proposed for republication as a result of oral comments received after the conclusion of the comment period.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.403, which directs the commissioner to supervise and regulate credit unions.

The specific section affected by the new rule is Texas Finance Code, §15.403.

§91.208. Notice of Known or Suspected Criminal Violations.

(a) Each credit union shall exercise reasonable due diligence to discover, investigate, and report theft, embezzlement, and other types of criminal activity affecting the credit union. The credit union shall provide written notice to the Department within 30 calendar days for any of the following known or suspected criminal violations:

- (1) Insider abuse involving any amount,
- (2) Other transactions, including potential money laundering or violations of the Bank Secrecy Act, aggregating \$5,000 or more,
- (3) Losses resulting from robbery or burglary.

(b) When applicable, a credit union may meet the reporting requirements of this section by providing the Department a copy of a Suspicious Activity Report prepared in accordance with the NCUA Rules and Regulations 12 C.F.R. §748.1(c). The timeframe for reporting the activity to the Department in this manner may be extended up to 60 days when authorized by the regulation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200900589
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: March 29, 2009
For further information, please call: (512) 837-9236



7 TAC §91.209

The Credit Union Commission (Commission) withdraws the proposed amendment to §91.209, concerning reports and charges for late filing. The amendment was previously published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9026). Simultaneously, the Commission proposes the same amendment for republication. The amendment removes subsection (b) which has been moved to and expanded in proposed new rule §91.208.

The amendments to §91.209 are withdrawn as a result of the Commission withdrawing and republishing proposed new rule §91.208 with additional changes.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar,

General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.403 which directs the commissioner to supervise and regulate credit unions.

The specific section affected by the amended rule is Texas Finance Code, §15.403.

§91.209. Reports and Charges for Late Filing.

(a) A credit union shall prepare and forward to the Department any report or other document that the Commissioner or this rule requires and will comply with all instructions relating to completing and submitting the report or document. For the purposes of this Section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing and must specifically advise the credit union that the provisions of this Section apply to the request.

~~[(b) Every credit union shall within ten (10) days after knowledge thereof report:]~~

~~[(1) The occurrence of any crime or suspected crime at any of the credit union's offices that requires the credit union to file a Suspicious Activity Report in accordance with federal regulations. This will include the discharge of any employee where the reason for such action was related to a crime or suspected crime; and]~~

~~[(2) The occurrence of any catastrophic act at any of the credit union's offices.]~~

(b) ~~[(e)]~~ A credit union may meet the reporting requirements of this subsection by providing the Department a copy of an applicable form required to be filed with an agency of the federal government or in any other manner acceptable to the commissioner.

(c) ~~[(d)]~~ If a credit union fails to file a report or provide a document within the timeframe specified in the instruction and after notice of non-receipt, the commissioner may assess a charge for the late filing of \$100 per day. The credit union shall pay the late charge to the department within thirty days of the assessment.

(d) ~~[(e)]~~ If a credit union fails to file a report or provide the requested information within the specified time, the commissioner or any person designated by the commissioner may examine the books, accounts and records of the credit union, prepare the report or gather the information and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236



SUBCHAPTER H. INVESTMENTS

7 TAC §91.802

The Credit Union Commission (Commission) proposes amendments to §91.802, concerning other investments. The proposed amendments correct a conflict with §91.803, which prohibits a credit union from investing in commercial mortgage related securities.

The amendments are proposed to resolve conflicting regulatory guidance.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §124.351 which sets out permitted investments.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

§91.802. Other Investments.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(2) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(3) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(4) Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(5) Counterparty--An entity with which a credit union conducts investment-related activities in such a manner as to create a credit risk exposure for the credit union to the entity.

(6) Eurodollar deposit--A deposit denominated in U.S. dollars in a foreign branch of a United States financial institution.

(7) Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(8) Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

(9) Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section. For the purposes of this section, the term does not include an investment authorized by §124.351(a)(1) of the Act.

(10) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41) [i.e., a privately-issued security backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, a residential manufactured home, or a commercial structure].

(11) Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's, Moody's, or Fitch which is recognized by the Securities and Exchange Commission.

(12) Ordinary care--The degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

(13) Investment repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(14) Borrowing repurchase transaction--A transaction whereby a credit union either:

(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or

(B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.

(15) Security--An investment that has a CUSIP number or that is represented by a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(A) either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(B) is of a type commonly traded on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or traded as a medium for investment; and

(C) either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(16) Settlement date--the date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(17) Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(18) Yankee dollar deposit--A deposit in a United States branch of a foreign bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, that is licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized by the board of directors.

(2) A specific limit on the amount that may be invested in any single investment or investment type.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) A list of authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and an internal process for assessing the credentials and previous record of the individual or firm.

(5) An appropriate risk management framework for the level of risk in the investment portfolio. This will include specific methods for evaluating, monitoring, and managing the credit risk, interest-rate risk, and liquidity risk from the investment activities.

(6) A list of authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy shall specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Investment repurchase transactions. A credit union may enter an investment repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated in one of the three highest rating categories by an NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

(4) Borrowing repurchase transactions. A credit union may enter into a borrowing repurchase transaction, which is a borrowing transaction subject to the Act, provided:

(A) any investments purchased by the credit union with either borrowed funds or cash obtained by the credit union in the transaction are authorized investments under Texas Finance Code §124.351 and this section;

(B) the credit union has entered into signed contracts with all approved counterparties; and

(C) investments referred to in paragraph (4)(A) of this subsection mature no later than the maturity date of the borrowing repurchase transaction; and

(D) the counterparty is rated in one of the three highest rating categories by an NRSRO.

(5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(6) Yankee dollars. A credit union may invest in yankee dollar deposits.

(7) Eurodollars. A credit union may invest in eurodollar deposits.

(8) Bankers' acceptance. A credit union may invest in bankers' acceptances.

(9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any investment or investment activity that is authorized under Texas Finance Code §124.351 or this section, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.

(10) Government-sponsored enterprises. A credit union may invest in government-sponsored enterprise obligations such as Federal Home Loan Banks, the Federal Home Loan Mortgage Cor-

poration, the Federal National Mortgage Association and the Student Loan Marketing Association.

(11) Commercial paper. A credit union may invest in commercial paper issued by corporations domiciled within the United States and having a rating of no less than A1 or P1 by Standard & Poor's or Moody's, respectively, or an equivalent rating by a NRSRO.

(12) Corporate bonds. A credit union may invest in corporate bonds which are rated in one of the two highest rating categories by a NRSRO (e.g. Standard & Poor's ratings AAA, and AA, and have remaining maturities of five years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds which are rated in one of the two highest rating categories by a NRSRO and have remaining maturities of five years or less.

(14) Mortgage related securities. With the exception of "accrual bonds" (or Z-bonds) or the residual interest of the mortgage related security, a credit union may invest in mortgage related securities, which are rated in one of the two highest rating categories by a NRSRO and are backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, or a residential manufactured home.

(15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a credit union may invest in asset-backed securities rated in one of the two highest rating categories by a NRSRO.

(d) Documentation: A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers under the Act and this rule. Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held. Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined. Before purchasing or selling a security, a credit union must obtain either price quotations on the security (or a similarly-structured security) from at least two broker-dealers or a price quotation on the security (or similarly-structured security) from an industry-recognized information provider.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

(f) Purchase or Sale of Investments Through a Third-Party.

(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or is a financial institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following information.

(A) The background of the primary sales representative and the local broker-dealer firm with whom the credit union is doing business, using information available from federal or state securities

regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer firm, its affiliates, or associated personnel.

(B) If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

(3) Requirements (1) and (2) of this subsection do not apply when a credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other financial institution.

(g) Discretionary Control Over Investments and Investment Advisers.

(1) Except as provided in paragraph (2) of this subsection, a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from the investment adviser and is required to authorize a recommended purchase or sale transaction before its execution.

(2) A credit union may delegate discretionary control over the purchase and sale of investments in an aggregate amount not to exceed 100% of its net worth at the time of delegation to persons other than the credit union's officials or employees, provided each such person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b).

(3) Before transacting business with an investment adviser to which discretionary control has been granted, and annually thereafter, a credit union must analyze the adviser's background and information available from federal and state securities regulators and securities industry self-regulatory organizations, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(4) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(5) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

(h) Investment Practice Permitted to Federal Credit Unions. If an applicant credit union proposes to make the same type of investment which a federally chartered credit union has been granted permission to make, the commissioner shall grant the application unless the commissioner finds that due to the financial position or the state of management of the applicant credit union, the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union. The commissioner may instead grant the application conditionally, grant in modified form, or deny the application.

(i) Modification or Revocation of Investment Authority. If the commissioner finds that due to the financial condition or management of a credit union, an investment practice authorized by this section has ceased to be a safe and prudent practice, the commissioner shall inform the board of directors of the credit union, in writing, that the authority to engage in the practice has been revoked or modified. The credit union's

directors and management shall immediately take steps to begin liquidating the investments in question or make the modification required by the commissioner. The commissioner for cause shown may grant the credit union a definite period of time to comply with the commissioner's orders. Credit unions which continue to engage in investment practices after their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound practice and a willful violation of an order of the commissioner and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

(j) Waivers.

(1) The commissioner in the exercise of discretion may grant a written waiver, consistent with safety and soundness principles, of a requirement or limitation imposed by this subchapter. A decision to deny a waiver is not subject to appeal. A waiver request must contain the following:

(A) A copy of the credit union's investment policy;

(B) The higher limit or ratio sought;

(C) An explanation of the need to raise the limit or ratio; and

(D) Documentation supporting the credit union's ability to manage this activity;

(2) In determining action on a waiver request made under subsection (a) of this section, the commissioner will consider the:

(A) Credit union's financial condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(B) Adequacy of the credit union's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if the waiver is approved.

(C) Credit union's record of investment performance. If the credit union's record of performance is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(D) Credit union's level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900579

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 837-9236

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SUBCHAPTER Q. ACCESS TO CONFIDENTIAL INFORMATION

7 TAC §91.8000

The Credit Union Commission (Commission) proposes amendments to §91.8000, concerning discovery of confidential information. The proposed amendments articulate important policy considerations and provide additional guidance for courts issuing protective orders.

The amendments are proposed as a result of recent experience with the rule.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §126.002, concerning confidentiality of information.

The specific section affected by the proposed amended rule is Texas Finance Code, §126.002.

§91.8000. Discovery of Confidential Information.

(a) Policy. The legislature has determined that certain information is confidential and, with limited exceptions, should not be disclosed. See Texas Finance Code, §126.002. Non-disclosure under this section protects the stability of credit unions by preventing disclosures that could adversely impact the institutions. Inappropriate disclosures can result in substantial harm to credit unions and to those persons and entities (including other financial institutions) that have relationships with them. For example, the department may criticize a credit union in an examination report for a financial weakness that does not currently threaten the solvency of the credit union. If improperly disclosed, the criticism can lead to adverse impacts such as the possibility of a "run," short-term liquidity problems, or volatility in costs of funds, which in turn can exacerbate the problem and cause the failure of the credit union. These failures lead to reduced access to credit and greater risk to depositors. Further, since specific loans may be criticized in an examination report, confidentiality of the information protects the financial privacy of borrowers. Finally, protecting confidential information from disclosure facilitates the free exchange of information between the credit union and the regulator, encourages candor, and promotes regulatory responsiveness and effectiveness. Information that does not fall within the meaning of confidential information as defined in this section may be confidential under other definitions and controlled by other laws, and is not subject to this section.

(b) Disclosure prohibited. Pursuant to Finance Code §126.002, the department has an absolute privilege against disclosure of its confidential information. Discovery of confidential information from a person subject to §126.002 must comply with subsection (c)

of this section. Only a person to whom confidential information has been released pursuant to §126.002 or this rule may disclose that information to another, and only in accordance with that section and this rule.

(c) [(a)] Discovery of confidential information [General Rule].

A credit union, governmental agency, credit union service organization, service provider, or insuring organization that receives a subpoena or other form of discovery for the release of information that is confidential under §126.002 of the Act shall promptly:

(1) notify the department of the request;

(2) provide the department with a copy of the discovery documentation and, if requested by the department, a copy of the requested information; and

(3) move for a protective order, or its equivalent under applicable rules of procedure. In addition, prior to the release of confidential information, such credit union, governmental agency, credit union service organization, service provider, or insuring organization must obtain a ruling on its motion in accordance with this section. Confidential information may be released only pursuant to a protective order, or its equivalent, in a form consistent with that set out in this section and only if a court with jurisdiction has found that:

(A) the party seeking the information has a substantial need for the information;

(B) the information is directly relevant to the legal dispute in issue; and

(C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.

(d) [(b)] Discretionary filings by department. On receipt of notice under subsection (c) [(a)] of this section, the department may take action as may be appropriate to protect confidential information. The department has standing to intervene in a suit or administrative hearing for the purpose of filing a motion for protective order and in camera inspection in accordance with this section.

(e) [(e)] Motion for protective order, or equivalent, and in camera inspection. The movant shall ask the court to enter an order in accordance with this section regarding the release of confidential information. If necessary to resolve a dispute regarding the confidential status or direct relevance of any information sought to be released, the party seeking the order shall move for an in camera inspection of the pertinent information. Until subject to a protective order, or its equivalent, confidential information may not be released, and, if necessary, the party seeking an order shall request the court officer to deny discovery of such confidential information.

(f) [(f)] Protective order or equivalent. An order obtained pursuant to the terms of this section must:

(1) specifically bind each party to the litigation, including one who becomes a party to the suit after the order is entered, each attorney of record, and each person who becomes privy to the confidential information as a result of its disclosure under the terms of the order;

(2) describe in general terms the confidential information to be produced;

(3) state substantially the following in the body of the order:

(A) absent court order to the contrary, only the court reporter and attorneys of record in the cause may copy confidential information produced under the order in whole or part;

(B) the attorneys of record are custodians responsible for all originals and copies of confidential information produced under the order and must insure that disclosure is limited to those persons specified in the order;

(C) confidential information subject to the order and all information derived there from may be used only for the purposes of the trial, appeal, or other proceedings in the case in which it is produced;

(D) confidential information to be filed or included in a filing in the case must be filed with the clerk separately in a sealed envelope bearing suitable identification, and is available only to the court and to those persons authorized by the order to receive confidential information, and all originals and copies made of such documents and records must be kept under seal and disclosed only in accordance with the term of the protective order;

(E) confidential information produced under the order may be disclosed only to the following persons and only after counsel has explained the terms of the order to the person who will receive the information and provided that person with a copy of the order;

(i) to a party and to an officer, employee, or representative of a party, to a party's attorneys (including other members and associates of the respective law firms and contract attorneys in connection with work on the case) and, to the extent an attorney of record in good faith determines disclosure is necessary or appropriate for the conduct of the litigation, legal assistants, office clerks and secretaries working under the attorney's supervision;

(ii) to a witness or potential witness in the case;

(iii) to an outside expert retained for consultation or for testimony, provided the expert agrees to be bound by the terms of the order and the party employing the expert agrees to be responsible for the compliance by its expert with this confidentiality obligation; and

(iv) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(F) at the request of the department or a party, only the court, the parties and their attorneys, and other persons the court reasonably determines should be present may attend the live testimony of a witness or discussions or oral arguments before the court that may include confidential information or relate to such confidential information. The parties shall request the court to instruct all persons present at such testimony, discussions, or arguments that release of confidential information is strictly forbidden;

(G) a transcript, including a deposition transcript, that may include confidential information subject to non-disclosure is subject to the order. The party requesting the testimony of a current or former department officer, employee, or agent shall, at its expense, furnish the department a copy of the transcript of the testimony once it has been transcribed.

(H) Upon ultimate conclusion of the case by final judgment and the expiration of time to appeal, or by settlement or otherwise, counsel for each party shall return all copies of every document subject to the order for which the counsel is custodian to the party that produced the confidential information; and

(I) Production of documents subject to the order does not waive a claim of privilege or right to withhold the documents from a person not subject to the order.

(4) Paragraph (3)(A), (B) and (E) - (H) of this subsection are subject to modification by the court for good cause before the conclusion of the proceeding, after giving the department ~~[upon]~~ notice and an opportunity to appear ~~[to the department]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.101

The Credit Union Commission (Commission) proposes an amendment to §97.101, concerning meetings. The proposed amendment adds a requirement that the minutes of the meetings of the Commission and its committees be posted on the agency website.

The amendment is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendment is proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.209 which authorizes the Commission to adopt reasonable rules governing meetings and the form of the minutes.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.209.

§97.101. Meetings.

The time and place of regular and special meetings of the Commission and its committees shall be determined by the applicable chair and posted in accordance with the Open Meetings Act (Government Code, Chapter 551). The minutes of each meeting shall be in writing, shall

be posted on the Department's website, and shall be [and] available to any person to examine during the Department's regular office hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



7 TAC §97.102

The Credit Union Commission (Commission) proposes an amendment to §97.102, concerning delegation of duties. The proposed amendment to §97.102 clarifies the purpose and limits of the delegation of duties to the Commissioner.

The amendment is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.402.

§97.102. *Delegation of Duties.*

The Commissioner is authorized to complete all filings necessary to facilitate the rule making powers of the Commission. The Commissioner may draft and sign final adoption orders and other such instruments where delegation is not restricted by statute or rule. Notwithstanding other provisions of this rule, this authority is conveyed only to promote administrative efficiency and to expedite properly approved decisions of the Commission [~~only~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

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For further information, please call: (512) 837-9236



7 TAC §97.107

The Credit Union Commission (Commission) proposes amendments to §97.107, concerning related entities. The proposed amendments expand the definition of a related entity to include a subsidiary or affiliate of a CUSO which is wholly owned or controlled by a credit union, and correct a typographical error.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.4032 which authorizes the Commission to establish rules for the examination of related entities.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.4032.

§97.107. *Related Entities.*

(a) Definition. For the purposes of this section, a related entity is defined as:

(1) a credit union service organization in which a credit union has a material interest by contracting with, lending to or investing in the organization;

(2) a subsidiary or affiliate of a credit union service organization that is wholly owned or controlled by a credit union;

(3) [(2)] an organization engaged primarily in the business of managing a credit union; and

(4) [(3)] third-party contractors providing electronic data processing, electronic fund transfers, or other member services to or on behalf of a credit union.

(b) General Supervision. A credit union should perform a thorough analytical assessment to identify, measure, monitor, and establish controls to manage the risks associated with related entities and avoid excessive risk-taking that may threaten the safety and soundness of a credit union. The department may review the risks associated with any related entity and its activities together with other credit union risks using its supervision-by-risk framework. The department shall assess the effectiveness of a credit union's oversight program of related entities, including its strategic planning, third-party selection process, and ongoing monitoring.

(c) Examination. A credit union's use of related entities to achieve its strategic goals does not diminish the responsibility of the department to ensure that the activity is conducted in a safe and sound manner and in compliance with applicable law. Although in most situations, these activities should be conducted in the same manner that would be expected if the credit union were conducting the activities directly, the department shall consider the following factors in determining whether to examine ~~[exam]~~ related entities:

- (1) the high risk or unusual nature of the activities conducted by the related entity for the credit union;
- (2) the significance of the activities conducted by the related entity for the credit union to the credit union's operations and income; and
- (3) the extent to which the credit union has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from activities conducted by the related entity. The department may examine a related entity, as the commissioner deems necessary to ensure that a credit union is not assuming excessive risk.

(d) Examination Fee. The related entity shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees ~~[Examinations]~~). A credit union may elect to pay the fee on behalf of the related entity. The supplemental examination fee for a related entity may be waived or reduced if the commissioner determines it is appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. FEES

7 TAC §97.113

The Credit Union Commission (Commission) proposes amendments to §97.113, concerning fees and charges. The proposed amendments revise the fee structure, clarify the treatment of credit unions exiting the state charter system, increase the supplemental examination fee from \$40 per hour to \$50 per hour, and revise the method for fee calculation in the event of a merger. The amendments also edit language for consistency and clarity.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which directs the Commission to establish by rule reasonable and necessary fees for the administration of Title 2, Chapter 15 and Subtitle D, Title 3 of the Finance Code.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.402.

§97.113. ~~[Operating]~~ Fees and Charges.

(a) Remittance of fees.

(1) Each credit union authorized to do business under the Act shall remit to the ~~department~~ [Department] an annual operating fee. The fee shall be paid in semi-annual installments, billed effective September 1 and March 1 of each year. The final installment may be adjusted as provided by subsection (d) of this section. Installments ~~[Such installments]~~ received after September 30 or March 30 of each year will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(2) Credit unions that exit the Texas credit union system on or before August 31 or February 28 of a given year, will not be subject to the semi-annual assessment for the period beginning September 1 or March 1, respectively. Only those credit unions leaving the state credit union system prior to the close of business on those dates avoid paying the semi-annual assessment for the period beginning September 1 or March 1, as applicable.

(b) Calculation of operating fees. The schedule provided in this section shall serve as the basis for calculating operating fees. The base date shall be June 30 of the year in which operating fees are calculated. The asset base may be reduced by the amount of reverse-repurchase balances extant on the June 30 base date. The commissioner is authorized to increase the fee schedule once each year as needed to match revenue with appropriations. An increase greater than 5% shall require prior approval of the commission. The commissioner shall notify the commission of any such adjustment at the first meeting of the commission following the determination of the fee schedule.
Figure: 7 TAC §97.113(b)

(c) Waiver of operating fees. The commissioner is authorized to waive the operating fee for an individual credit union when good cause exists. The commissioner shall document the reason(s) for each waiver of operating fees and report such waiver to the commission at its next meeting.

(d) Adjustment of an installment. The commissioner in the exercise of discretion may, after review and consideration of actual revenues to date and projected revenues for the remainder of the fiscal year, lower the amount of the final installment due from credit unions.

(e) Supplemental examination fees.

(1) If the commissioner or deputy commissioner schedules a special examination in addition to the regular examination, the credit union is subject to a supplemental charge to cover the cost of time and expenses incurred in the examination.

(2) The credit union shall pay a supplemental fee of \$50 [\$40] for each hour of time expended on the examination. The commissioner may waive the supplemental fee or reduce the fee, individually or collectively, as he deems appropriate. Such waiver or reduction shall be in writing and signed by the commissioner. The department shall fully explain the time and charges for each special examination to the president or designated official in charge of operations of a credit union.

(f) Foreign credit union branches. Credit unions operating branch offices in Texas as authorized by §91.210 of this title (relating to Foreign Credit Unions [Certificate of Authority to Do Business in the State of Texas]) shall pay an annual operating fee of \$500 per branch office.

(g) Credit union conversion fee. A credit union organized under the laws of the United States or of another State that converts to a credit union organized under the laws of this State shall remit to the department an annual operating fee within 30 days after the issuance of a charter by the commissioner. The schedule provided in subsection (b) of this section shall serve as the basis for calculating the operating fee. All provisions set forth in subsection (b) of this section shall apply to converting credit unions with the following exceptions:

(1) Should the effective date of the conversion fall on or after October 31, the base date shall be the calendar quarter end immediately preceding the issuance date of a charter by the commissioner.

(2) The amount of the operating fee calculated under this section will be prorated based upon the number of full months remaining until September 1. For example, should the effective date of the conversion be January 31, the converting credit union will remit seven-twelfths of the amount of the operating fee calculated using December 31 base date.

(3) Any fee received more than 30 days after the issuance of a charter will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(h) Mergers/Consolidations. In the event a credit union in existence as of June 30 merges or consolidates with another credit union and the merger/consolidation is completed on or before August 31 [September 1], the surviving credit union's asset base, for purposes of calculating the operating fee prescribed in subsection (b) of this section, will be increased by the amount of the merging credit union's total assets as of the June 30 base date. [union shall remit to the department the amount that the merging/consolidating credit union would have paid if it had still been in existence on September 1.]

(i) Special assessment. The commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

(j) Foreign credit union fee for field of membership expansion. A foreign credit union applying to expand its field of membership in Texas shall pay a fee of \$200. This fee shall be paid at the time of filing to cover the cost of processing the application. In addition, the

applicant shall pay any cost incurred by the department in connection with a hearing conducted at the request of the applicant.

(k) Foreign credit union examination fees.

(1) If the commissioner schedules an examination of a foreign credit union, the credit union is subject to supplemental [supplement] charges to cover the cost of time and expenses incurred in the examination.

(2) The foreign credit union shall pay a fee of \$50 [\$40] for each hour of time expended by each examiner on the examination. The commissioner may waive the examination fee or reduce the fee as he deems appropriate.

(3) The foreign credit union shall also reimburse the department for actual travel expenses incurred in connection with the examination, including mileage, public transportation, food, and lodging in addition to the fee set forth in paragraph (2) of this subsection. The commissioner may waive this charge at his discretion.

(l) Contract Services. In addition, the commissioner may charge, or otherwise cause to be paid by, a credit union, a foreign credit union or related entities [parties] the actual cost incurred by the department [Department] for an examination or a review of all or part of the operations or activities of a credit union, a foreign credit union or related entity [parties] that is performed under a personal services contract entered into between the department [Department] and third parties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

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For further information, please call: (512) 837-9236



7 TAC §97.114

The Credit Union Commission (Commission) proposes amendments to §97.114, concerning charges for public records. The proposed amendments update statutory references, including references to the Office of the Attorney General's regulations concerning charges for providing public information. The amendments also delete unnecessary language setting the fees.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is

no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.402.

§97.114. Charges for Public Records.

(a) **Reproduction Charges.** Copies of documents not excepted from disclosure by the Texas Public Information Act (Government Code, Chapter 552) may be obtained upon written request to the department at rates established by the Office of the Attorney General [General Services Commission] in 1 TAC §§70.1 - 70.12 [§§111.61-111.70] (relating to Cost of Copies of Public Information) or other applicable law.

[(b) **Charge for Fax Transmittal.** On request, the agency may transmit a form or other document by facsimile (FAX) machine to the person making the request. The charge for this service is \$.10 per page for local telephone delivery; \$.50 per page for telephone delivery within the same area code; and \$1.00 per page for telephone delivery to a different area code; excluding any cover or transmittal page.]

[(c) **Service Charges.**]

[(1) For copies of more than 50 pages of readily available information, a charge of \$15 per hour of personnel time spent locating, copying, and preparing the information for delivery or inspection shall be added to charges specified by subsections (a) and (b) of this section.]

[(2) For copies of information that is not readily available; a charge of \$15 per hour of personnel time spent locating, copying, redacting confidential information, and preparing the information for delivery or inspection including computer time, if applicable, plus \$3.00 per hour for overhead, plus \$.50 per minute of computer time (if applicable) shall be added to the charges specified by subsections (a) and (b) of this section.]

[(3) If certification of copies is requested, an additional charge of \$5.00 per document will be added to the computed fee.]

[(4) If the anticipated charges under this section exceed \$100, the department may require a bond for payment of costs or cash prepayment equal to the total anticipated charges prior to release of the requested information.]

[(d) **Delivery charges.**]

[(1) U.S. mail. When copies are required to be mailed, the cost of postage will be added to the computed fee.]

[(2) Expedited delivery. When copies are required to be sent by overnight courier or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor furnishes a recipient billing number for use by the department in delivering the copies to the carrier.]

(b) [(e)] **Request for Information.** The following guidelines apply to requests for records under the Public Information Act [Open Records Act] (Government Code, Chapter 552).

(1) Request must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the department.

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication, at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will [only] be provided only the option of receiving copies by duplication.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication unless required by a court order or Attorney General decision [directive].

(c) [(f)] **Waiver of Fees or Charges.** The commissioner may waive or reduce an established charge when, in his or her discretion, a waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public. The fee may also be waived if the cost of processing the collection of a charge will exceed the amount of the charge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

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For further information, please call: (512) 837-9236



SUBCHAPTER C. DEPARTMENT OPERATIONS

7 TAC §97.205

The Credit Union Commission (Commission) proposes amendments to §97.205, concerning use of historically underutilized businesses. The proposed amendments update statutory references.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits

anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.402.

§97.205. Use of Historically Underutilized Businesses.

Pursuant to Chapter 2161 of the Government Code, the Department hereby incorporates by reference the rules of the Comptroller of Public Accounts, 34 [General Services Commission, 4] TAC §§20.11 - 20.28 (relating to Historically Underutilized Business Program) [§§111.11 - 111.28], or any successor rules, regarding historically underutilized businesses. The Department shall comply, to the extent applicable, with the requirements of these rules when purchasing goods and services that are paid for with State appropriated money.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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7 TAC §97.207

The Credit Union Commission (Commission) proposes amendments to §97.207, concerning contracts for professional or personal service. The proposed amendments update statutory references.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is

no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.414, which directs the commission to adopt rules for soliciting and awarding contracts.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.414.

§97.207. Contracts for Professional or Personal Service.

(a) In connection with the authority granted to the commissioner to negotiate, contract or enter into an agreement for professional or personal services under §15.414, Texas Finance Code, the Department hereby incorporates by reference the procurement rules of the Comptroller of Public Accounts, 34 [Texas Building and Procurement Commission, 4] TAC Chapter 20 (relating to Texas Procurement and Support Services) [Chapter 13A], or any successor rules, regarding soliciting and awarding contracts. The Department shall comply, to the extent applicable, with the requirements of these rules when contracting for professional or personal services that are paid for with State appropriated money or paid by credit unions pursuant to 7 TAC §97.113(l).

(b) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds: "Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included [~~include~~] in any subcontract it awards."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. GIFTS AND BEQUESTS

7 TAC §97.300

The Credit Union Commission (Commission) proposes an amendment to §97.300, concerning gifts of money or property. The proposed amendment makes a grammatical clarification.

The amendment is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 15, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.415 which authorizes the Department to accept money or property by gift.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.415.

§97.300. Gifts of Money or Property.

(a) The department may ~~only~~ accept money or property by gift, bequest, devise, or otherwise ("Donation"), only from an organization described in Section 501(c)(3), Internal Revenue Code of 1986, for the purposes of funding or performing any authorized activity ("Donor").

(b) All Donations must be accepted in an open meeting by a majority of the commission members present and reported in the minutes of the meeting setting forth the name of the Donor and the purpose of the Donation. Before accepting a Donation, the commission may require the Donor to provide information that the commission deems reasonable and necessary to ensure itself that the Donation is not being conveyed to directly or indirectly influence an official act of the department or the commission.

(c) The department may not solicit money or property from any person or organization to settle an administrative action or to keep the department ~~[Department]~~ from taking formal enforcement action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900582

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 837-9236

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §1.36

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 1, Subchapter B, §1.36, concerning the Property Condition Assessment Guidelines section of the Real Estate Analysis Rules and Guidelines. These sections are proposed for amendment in order to address the technical error that was made to the final rule and the inadvertent omission of a portion of §1.36 guidelines.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended sections are in effect the public benefit anticipated as a result of enforcing the amended section will be the more efficient organization and use of Department resources as a result of providing separate processes for the disposition of Department assets and the assessment and collection of administrative penalties. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Written comments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The amended sections affect no other code, article or statute.

§1.36. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (the PCA) is to provide cost estimates for repairs, replacements, or new construction which are: immediately necessary; proposed by the developer; and expected to be required throughout the term of the regulatory period and not less than 30 years. The PCA

prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2138" except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include discussion and analysis of the following:

(1) **Useful Life Estimates.** For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject property;

(3) **Program Rules.** The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points; and

(4) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the development cost schedule submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional repair, replacement, or new construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component of the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of

this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(b) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) TX-USDA-RHS guidelines for Capital Needs Assessment; or,
- (5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

(c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named above in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA should be signed and dated by the Third Party report provider not more than six months prior to the date of the application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900566
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 29, 2009
For further information, please call: (512) 475-3916

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PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 304. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §304.1

The Texas Residential Construction Commission proposes an amendment to 10 TAC §304.1, regarding General Provisions. In defining the term "habitable area," §304.1(c)(9) cross references the term "living space," which is found in §300.10(18) rather than in §301.1(14). The commission proposes to merely delete the reference to §301.1(14) and to provide the correct citation of §300.10(18).

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed amendment is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the amended rule.

Ms. Durso has also determined that for the first five years the proposed amendment is in effect the public will benefit from the clarification because persons interested in the terms "habitable area" or "living space" may more easily locate the assigned meanings of those terms. Additionally, the cross-reference correction removes ambiguity and clarifies the section to which the commission intends for application. There is no anticipated economic cost to small businesses, micro-businesses or persons who are required to comply with the proposed amendment because the amendment merely corrects a cross-reference. Therefore, no regulatory flexibility analysis is necessary.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendment is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed amendment may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Section 304.1 Amendment" in the subject line. The deadline for submission of comments is twenty (20) days from the date of publication of the proposed rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration. Comments submitted electronically that do not have "Section 304.1 Amendment" in the subject line or that are sent to an address other than comments@trcc.state.tx.us may not be considered.

The amendment is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code; Property Code Chapter 430, which authorizes the commission to adopt rules to implement statutory warranties and building and performance standards; and the Administrative Procedures Act, Texas Government Code, Chapter 2001.

No other statutes, articles, or codes are affected by the proposed rule amendment.

§304.1. General Provisions.

(a) - (b) (No change.)

(c) Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (8) (No change.)

(9) Habitable Area--a living space as defined in §300.10(18) [~~§301.1(14)~~] of this title.

(10) - (16) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900574

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 463-3926



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §26.57

The Public Utility Commission of Texas (commission) proposes new §26.57 relating to the requirements for a certificate holder's use of an alternate technology to meet its provider of last resort (POLR) obligations. The rule will establish minimum service quality standards for a certificate holder that uses alternate technology to meet its POLR obligations in providing basic local telecommunications services. Project Number 31958 is assigned to this proceeding.

Nara Srinivasa, Director of the Reliability and Licensing Section in the Infrastructure and Reliability Division, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Srinivasa, has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the implementation of Public Utility Regulatory §54.251(c), which requires the commission to establish requirements for a certificate holder's use of an alternate technology to meet its POLR obligations. There will be no adverse economic effect on small businesses or micro-businesses

as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There will be no economic costs to persons who are required to comply with the rule, because the rule will give certificate holders the option to use alternate technologies to provide POLR service when those technologies are more appropriate than traditional circuit-switched wireline or landline technologies.

Mr. Srinivasa has also determined that for each year of the first five years the rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Initial comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 31958.

This rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §54.251(c) which requires the commission to establish requirements for a certificate holder's use of an alternate technology to meet its POLR obligations.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §54.251(c).

§26.57. Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its Provider of Last Resort Obligation.

(a) Purpose. This section establishes the requirements that apply when the holder of a certificate holder uses an alternate technology to meet its provider of last resort (POLR) obligations.

(b) Definitions. The following terms used in this section shall have the following meanings, unless the context indicates otherwise.

(1) Alternate technology--a technology other than traditional circuit-switched wireline or landline technologies.

(2) Certificate holder--a holder of a certificate of convenience and necessity or a certificate of operating authority.

(c) Application of this section. A certificate holder may use an alternate technology to meet its POLR obligations only after the commission approves the use of that alternate technology. A certificate holder must be granted approval for each type of alternate technology used to meet its POLR obligations. Unless determined otherwise by the commission, upon receiving approval to use an alternate technology to meet its POLR obligations, a certificate holder may use that technology anywhere in its service territory to meet its POLR obligations.

(d) Standards for meeting POLR obligations using an alternate technology. In using an alternate technology to meet its POLR obligations, a certificate holder shall comply with the following standards.

(1) Quality of service. Unless determined otherwise by the commission, the certificate holder shall meet applicable minimum quality of service standards comparable to the following requirements.

(A) §26.52 of this title (relating to Emergency Operations);

(B) §26.53 of this title (relating to Inspections and Tests); and

(C) §26.54 of this title (relating to Service Objectives and Performance Benchmarks).

(2) 911 Service. The certificate holder shall meet the following 911 service requirements.

(A) A certificate holder shall provide 911 services in accordance with requirements comparable to those set forth in Chapters 771 and 772 of the Texas Health and Safety Code and federal law, as applicable; and

(B) A certificate holder providing 911 service to a fixed location shall include validated address location as part of the Automatic Location Identification.

(3) Price. The service provided by the certificate holder to meet its POLR obligations in an exchange shall be offered at a price comparable to the monthly service charge for comparable services in that exchange or in the certificate holder's nearest exchange.

(e) Application to meet its POLR obligations using an alternate technology. A certificate holder shall file a detailed application demonstrating that the certificate holder meets the standards set forth in subsection (d) of this section.

(f) Commission processing of application.

(1) Notice.

(A) The commission shall provide notice in the *Texas Register*.

(B) The applicant shall provide additional notice as required by the commission.

(2) Sufficiency of application. A motion to find an application materially deficient shall be filed no later than 15 working days after an application is filed. The motion shall be served on the applicant such that the applicant receives it by the day after it is filed. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application materially deficient shall be filed no later than five working days after such motion is received. If within 26 working days after the filing of the application, the presiding officer has not filed a written order concluding that material deficiencies exist in the application, the application is deemed sufficient. The presiding officer shall notify the parties of any material deficiencies by written order and the applicant must cure the deficiencies within 30 days of receipt of the order.

(3) Review of application. If the requirements of §22.35 of this title (relating to Informal Disposition) are met, the presiding officer shall issue a notice of approval or proposed order within 60 days of the date a materially sufficient application is filed unless good cause exists to extend this deadline. If the requirements of §22.35 of this title are not met, the presiding officer shall establish a procedural schedule that provides for the resolution of the issues in the proceeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900568
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 29, 2009
For further information, please call: (512) 936-7223



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 43. ACCOUNTING

The Texas Alcoholic Beverage Commission proposes the repeal of Chapter 43, Accounting, which includes §43.1 relating to fees collected by county tax assessor and §43.11 relating to liquor prescription tax stamps.

Government Code, §2001.039, requires that each state agency review and consider for readoption every four years each rule adopted by the agency under Government Code, Chapter 2001. Sections 43.1 and 43.11 have been reviewed and the commission has determined that they are obsolete and are no longer necessary.

Specifically, §43.1 relates to sending statements to county tax assessors and their payment of those statements. It is a statement regarding only the internal management and does not affect private rights or procedures so it is inappropriate as an agency rule as that term is defined at §2001.003(6).

Section 43.11 relates to tax stamps for liquor used for medicinal purposes. This rule is obsolete. Chapter 39 of the Code relating to Medicinal Permits was repealed in 2001. Chapter 40 of the Code relating to Physician's Permit was also repealed in 2001. Additionally, §38.02 exempts pharmacists filling a prescription issued by a physician in the legitimate practice of medicine from obtaining a permit. Section 38.06 makes the use of alcohol and denatured alcohol in medicinal and pharmaceutical applications tax exempt.

Charlie Kerr, Chief Financial Officer, has determined that for the first five years that the proposed repeal is in effect there will be no fiscal impact on units of state or local government as a result of the repeal of this chapter and sections.

Mr. Kerr has determined that for the first five years following the repeal there will be no fiscal impact on small or micro-businesses. There is no anticipated impact on persons as a result of the repeal of the chapter and sections.

Sherry Cook, Assistant Administrator, has determined that for each of the first five years following the repeal it is anticipated that the public will benefit by not having obsolete rules in the laws of the State of Texas.

Comments on the proposed repeal may be addressed to Joan Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*.

SUBCHAPTER A. FEES

16 TAC §43.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The proposed repeal of the existing rules are authorized by §5.31 of the Alcoholic Beverage Code, and §2001.039 of the Government Code.

Cross Reference: Sections 5.31, 38.01, 38.02 and 38.06 of the Alcoholic Beverage Code will be affected by the proposed repeal.

§43.1. Fees Collected by County Tax Assessor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900569
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: March 29, 2009
For further information, please call: (512) 206-3204



SUBCHAPTER B. LIQUOR PRESCRIPTION TAXES

16 TAC §43.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The proposed repeal of the existing rules are authorized by §5.31 of the Alcoholic Beverage Code, and §2001.039 of the Government Code.

Cross Reference: Sections 5.31, 38.01, 38.02 and 38.06 of the Alcoholic Beverage Code will be affected by the proposed repeal.

§43.11. Tax Stamps.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900570
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: March 29, 2009
For further information, please call: (512) 206-3204



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) proposes new §§230.1, 230.412, and 230.481, amendments to §§230.5, 230.411, 230.413, 230.431 - 230.438, 230.461 - 230.464, 230.482, 230.483, 230.501 - 230.507, 230.512, 230.551 - 230.555, 230.559, 230.560, and 230.610, and the repeal of §§230.121, 230.192 - 230.199, 230.301, 230.305, 230.310, 230.316, 230.481, 230.484, 230.509 - 230.511, 230.601, and 230.801, concerning provisions for professional educator preparation and certification. The sections provide for rules that establish guidelines and procedures for certification requirements, fees, permits, educational aides, and assignment criteria relating to professional educator preparation and certification.

The proposed revisions to 19 TAC Chapter 230 would update the rules to reflect current law and add specificity to the requirements for professional educator preparation and certification. The proposed new sections, amendments, and repeals result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The proposed revisions reflect discussions held during the June 5 and 6, 2008, and November 5, 2008, stakeholder meetings. Following is a description of the proposed changes.

Subchapter A. Assessment of Educators

This subchapter would be reorganized as proposed new Subchapter B. Language in §230.5(f) would be updated since examination scores are no longer mailed to the examinee. As a result of input from stakeholders, §230.5(i) would be deleted because a general reference can be found in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

Subchapter E. Centers for Professional Development of Teachers

This subchapter is proposed for repeal due to the fact that the Centers for Professional Development of Teachers no longer exist.

Subchapter G. Certification Requirement for Classroom Teachers

This subchapter is proposed for repeal since most of the rules are now obsolete. Sections 230.193, 230.194, and 230.199(d)(2), relating to teacher certificates and endorsements, would be moved to proposed new §230.481 and §230.482 in Subchapter P.

Subchapter J. Certification Requirements for Educators Other than Classroom Teachers and Educational Aides

This subchapter is proposed for repeal since the certificates included in this subchapter have been replaced with new certificates. Certification information related to the reading specialist, temporary certificate, and educational diagnostician can be found in other rules of the SBEC.

Subchapter M. Certification of Educators in General

Language in §230.413(a) would be revised to align with recently approved language regarding degrees in Chapter 232, General Certification Provisions. Language in §230.413(c) and (d), relating to elementary and secondary certificate options, would be deleted since these rules are now obsolete. Language in §230.413(e) would be deleted since provisions for a nonrenewable permit are described in Subchapter Q.

Subchapter N. Certificate Issuance Procedures

Language in §230.431(d) would be added to emphasize the virtual certificate is the official record of educator certification. Language in §230.432 would be revised to reflect the current application and recommendation process. Language in §230.433 would be added to clarify that a certificate must be active and valid in order to issue a duplicate. Language in §230.434(a)(1), relating to certificate issuance dates, would be modified to update the rule. Language in §230.434(b)(1) would be updated since education service centers are no longer required to process permits. The title of §230.437 would be revised to emphasize that certification by examination is for additional certificates and not initial certificates.

Subchapter O. Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States

Language in §230.462(b)(1), relating to special subject certificates, would be deleted since the rule is obsolete. Language in §230.462(b)(2) would be revised to align with standard certification requirements and moved as part of subsection (b). Language in §230.462(d) would be added regarding the validity of a one-year certificate to provide some flexibility to employing school districts when circumstances beyond the educator's control arise. Section 230.462(h) and (i), relating to transition language, would be deleted since the rules no longer apply.

Subchapter P. Requirements for Standard Certificates and Specialized Assignments or Programs

Section 230.481 is proposed for repeal since the provision would be moved to proposed new 230.412. As a result of stakeholder input, language in §230.483(a)(4) would be added to allow educator preparation programs to prepare teachers for health science technology education certification and trade and industrial education certification in one year. Language in §230.483(c) would be added to clarify teaching experience may be used in lieu of on-the-job experience under the career and technical education certificate. Language in §§230.482(a)(4) and (5), 230.482(b) and (d), 230.483(a)-(e), and 230.484 would be deleted since the rules are obsolete or can be found in 19 TAC Chapter 233.

Subchapter Q. Permits

Language in §230.501(c) would be added to emphasize that consent is required when a certified teacher is to be placed on an emergency permit. Language in §230.504(b)(1) would be added to clarify the subjects directly related to the elementary curriculum. As a result of stakeholder input, language in §230.504(b)(2) would be added to clarify permit requirements for the elementary foreign language assignment. In response to input from the TEA curriculum staff, language in §230.504(f)(1) would be revised to update the permit requirements for instructing English language learners. Language in §230.504(e)(2) would be revised since an associate degree is no longer an option for health science technology education certification. New requirements would be added to §230.504(e)(3)-(6) to align with new career and technical education certificate requirements. Language in §230.504(f)(2)(A) and (B) would be revised to incorporate current terminology, resulting from stakeholder input. Sections 230.509, 230.510, and 230.511 would be proposed for repeal since the Visiting International Teacher (VIT) certificate is now available for exchange teachers. Language would also be deleted throughout this subchapter to remove obsolete provisions.

Subchapter S. Educational Aide Certificate

This subchapter contains no substantive content changes.

Subchapter U. Assignment of Public School Personnel

This subchapter is proposed for repeal since the contents would be reorganized as proposed new 19 TAC §231.1, Criteria for Assignment of Public School Personnel, to provide clarity and improved accessibility to the requirements relating to the assignment of educators.

Subchapter V. Continuing Education

The title would be revised to clarify the information contained in this subchapter related to teacher induction and mentoring.

Subchapter Y. Definitions

This subchapter is proposed for repeal since definitions relating to professional educator preparation and certification would be revised and reorganized under proposed new Subchapter A to align with definitions found in SBEC rules.

Technical Changes

Throughout Chapter 230, numerous grammatical and technical changes would be made, such as replacing the term "executive director" with the term "TEA staff" or "State Board for Educator Certification" where appropriate. Also, statutory citation references would be updated and standardized to reflect current law and Texas Register formatting requirements. Sections would also be restructured for consistency and readability.

Regarding procedural and reporting implications for the proposed rule actions, the TEA staff have determined that there are no new procedural and reporting implications to school districts and educators. The proposed rule actions would not include any additional locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed new sections, amendments, and repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

Mr. Booker has determined that for the first five-year period the proposed new section is in effect the public benefit anticipated as a result of the proposed new sections, amendments, and repeals would be in the reorganization and clarification of the certification requirements, fees, procedures, permits, and criteria for professional educator preparation and certification. There is no anticipated economic cost to persons or entities required to comply with the proposed new sections, amendments, and repeals.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed new sections, amendments, and repeals submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker,

not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

19 TAC §230.1

The new section is proposed under the TEC §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed new section implements the TEC, §21.041(b)(1) and (2).

§230.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Certificate--Any credential issued by the State Board for Educator Certification (SBEC) under the authority of the Texas Education Code (TEC), Chapter 21, Subchapter B.

(2) Educator--A person who is required to hold a certificate issued under the TEC, Chapter 21, Subchapter B.

(3) Educator preparation program--An entity approved by the SBEC to recommend candidates in one or more educator certification fields.

(4) Examination--An examination or other test required by statute or SBEC rule that governs an individual's admission to an educator preparation program; certification as an educator; continuation as an educator; or advancement as an educator.

(5) Mentor--For a classroom teacher, a certified educator assigned by the campus administrator who has completed mentor training; who guides, assists, and supports the beginning teacher in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the beginning teacher's progress to that teacher's educator preparation program.

(6) Private school--A school whose educational program has been evaluated by a state department of education or regional accrediting agency and whose program has met and is maintaining certain educational standards.

(7) Teacher service record--The official document used to record years of service and days used and accumulated under the state's former minimum sick leave program or the state's current personal leave program.

(8) Texas Education Agency staff--Staff of the Texas Education Agency (TEA) assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(9) Texas public school--A school accredited by the TEA under the TEC, §39.073.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900612

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**SUBCHAPTER B. ASSESSMENT OF
EDUCATORS**

19 TAC §230.5

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.045(a)(1), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on information that is disaggregated with respect to sex and ethnicity and that includes results of the certification examinations prescribed under the TEC, §21.048(a); and §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC.

The proposed amendment implements the TEC, §§21.031, 21.045(a)(1), and 21.048(a).

§230.5. Educator Assessment.

(a) A candidate [Anyone] seeking admission [admittance] to an approved educator [teacher] preparation program for initial certification must be assessed for basic [college level] skills in reading, [oral and] written communication, and mathematics.

(b) A candidate [Anyone] seeking certification as an educator must pass examinations required by the Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority).

(c) A candidate [Anyone] seeking a standard certificate as an educator based on completion of an approved educator preparation program may take the appropriate certification examinations required by subsection (b) of this section at such time as the educator preparation program [entity delivering the certification program] determines the candidate's [individual's] readiness to take the examinations, or upon successful completion of the educator preparation program, whichever comes first.

(d) The holder of [Anyone with] a Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(e) For an [any] examination or other assessment required by law or under the provisions of this title, [section], the SBEC approves the satisfactory level of performance required, a schedule of examination fees, and a plan for administering the examination.

(f) Scores from [all] examinations required under this title [section] must be made available [sent] to the examinee, the Texas Ed-

ucation Agency (TEA) staff, [SBEC] and, if appropriate, the educator preparation program [institution] from which the examinee will seek a recommendation for certification [as a teacher or an administrator].

(g) A candidate [An individual] seeking an exemption under the TEC [Texas Education Code (TEC)], §21.048, must have a report submitted to the TEA staff [SBEC] by an audiologist licensed by the State of Texas, documenting that the candidate [applicant] is hearing impaired as defined in the TEC [Texas Education Code (TEC)], §21.048(d)(1). The report from the audiologist may not be dated more than one year from the date of application for the exemption.

(h) The following provisions concern test security and confidential integrity.

(1) An educator who participates in the development, design, construction, review, field testing, or validation of an [any] examination shall not reveal or cause to be revealed the contents of the [that] examination to any other person.

(2) An educator who administers an [any] examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An [Any] educator who violates subsection (b) or (c) of this section is subject to sanction in accordance with the provisions of the TEC [Texas Education Code (TEC)], §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases).

(4) An educator who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(5) An [Any] educator who violates this subsection [(h) of this section] is subject to:

(A) sanction in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title [Texas Education Code (TEC) 21.041(b)(7)];

(B) voiding of a [any] score from an examination in which a violation specified [violations] in this subsection [(h) of this section] occurred; and

(C) disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession.

[(+)] An individual seeking certification to teach visually impaired students must pass the test of braille reading and writing skills adopted by the SBEC by performing at or above the standard adopted by the SBEC.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

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Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497



SUBCHAPTER E. CENTERS FOR PROFESSIONAL DEVELOPMENT OF TEACHERS

19 TAC §230.121

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code (TEC), §21.047(a), which states that the State Board for Educator Certification (SBEC) may develop the process for the establishment of centers for professional development through institutions of higher education for the purpose of integrating technology and innovative teaching practices in the preservice and staff development training of public school teachers and administrators; §21.047(b), which states that, on application by a center, the SBEC shall make grants to the center for its programs from funds derived from gifts, grants, and legislative appropriations for that purpose; and §21.047(c), which states that a center may develop and implement a comprehensive field-based educator preparation program to supplement the internship hours required in the TEC, §21.050.

The proposed repeal implements the TEC, §21.047.

§230.121. *Designation of Centers for Professional Development of Teachers.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. CERTIFICATION REQUIREMENT FOR CLASSROOM TEACHERS

19 TAC §§230.192 - 230.199

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid.

The proposed repeals implement the TEC, §21.031(a) and §21.041(b)(1)-(3).

§230.192. *Teacher Certificate--Elementary.*

§230.193. *Teacher Certificate--Secondary.*

§230.194. *Teacher Certificate--All-Level.*

§230.195. *Special Education Certificates.*

§230.196. *Vocational Agriculture Certificates.*

§230.197. *Vocational Home Economics Certificates.*

§230.198. *Vocational Marketing Education Certificates.*

§230.199. *Endorsements.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

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SUBCHAPTER J. CERTIFICATION REQUIREMENTS FOR EDUCATORS OTHER THAN CLASSROOM TEACHERS AND EDUCATIONAL AIDES

19 TAC §§230.301, 230.305, 230.310, 230.316

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed repeals implement the TEC, §21.041(b)(2).

§230.301. *General Provisions.*

§230.305. *Temporary Certificate.*

§230.310. *Reading Specialist.*

§230.316. *Educational Diagnostician (Special Education).*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jerel Booker

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State Board for Educator Certification

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SUBCHAPTER M. CERTIFICATION OF EDUCATORS IN GENERAL

19 TAC §§230.411 - 230.413

The amendments and new section are proposed under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the

basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; §21.048(c)(1), which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.214, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B.

The proposed amendments and new section implement the TEC, §§21.041(b)(2) and (4), 21.044, 21.048, 21.050, and 22.082.

§230.411. *Purpose.*

The purpose of certifying public school educators is to identify qualified and professionally prepared individuals. The certification shall comply with the Texas Education Code, Chapter 21, Subchapter B, [Chapter 21, TEC,] and rules adopted by the State Board for Educator Certification [under that statutory authority].

§230.412. *Standard Certificate Requirements.*

(a) Standard classroom teacher certificates, including special education certificates, career and technical education certificates, and endorsement areas, based on completion of an approved educator preparation program shall require:

(1) at least a baccalaureate degree and, for certain career and technical education certificates, preparation and experience in a skill area as specified in Subchapter P of this chapter (relating to Requirements for Standard Certificates and Specialized Assignments or Programs);

(2) recommendation by an approved educator preparation program; and

(3) submission of a passing score on a comprehensive examination prescribed by the State Board for Educator Certification as specified in §230.5 of this title (relating to Educator Assessment).

(b) Standard career and technical education certificates based on experience and preparation in a skill area shall require:

(1) preparation and experience in a skill area and, for certain career and technical education certificates, completion of a baccalaureate degree; and

(2) recommendation by an educator preparation program approved to offer professional development courses required for career and technical education certification.

§230.413. General Requirements.

(a) The only credits and degrees acceptable for certification of [aH] educators are those earned from and conferred by institutions of higher education that at the time were accredited or otherwise approved by an [a state department of education, a recognized governmental organization, or a recognized regional] accrediting organization recognized by the Texas Higher Education Coordinating Board. All credit hour requirements for certification are semester credit hours or their equivalent.

(b) An applicant for a Texas educator certificate must:

(1) be at least 18 years old [of age];

(2) successfully resolve any criminal history and not be disqualified or the subject of a pending proceeding under Chapter 249 of this title[-] (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) [-, including Enforcement of the Educator's Code of Ethics];

(3) not be disqualified by federal law;

(4) be willing to support and defend the constitutions of the United States and Texas;

(5) be able to speak and understand the English language sufficiently to use it easily and readily in conversation and teaching. English language proficiency may be evidenced by one of the following:

(A) completion of an undergraduate or graduate degree at an institution of higher education in the United States;

(B) if an undergraduate or graduate degree was earned at an institution of higher education outside of the United States, evidence must be provided under procedures approved by the Texas Education Agency (TEA) staff [executive director] that the primary language of instruction was English;

(C) completion of a state-approved educator preparation program within the United States;

(D) verification of three creditable years of teaching experience as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) [Subchapter Y of this title (relating to Definitions)], in an educational setting within the United States or, if the experience was earned in an educational setting outside of the United States, evidence under procedures approved by the TEA staff [executive director] that the primary language of instruction was English; or

(E) verification of satisfactory scores on an English language proficiency examination(s) [exam(s)] approved by the TEA staff [executive director of SBEC];

(6) successfully complete [aH] appropriate examinations prescribed in §230.5 of this title [chapter] (relating to Educator Assessment) for the educator certificate sought; and

(7) satisfy one or more of the following requirements:

(A) complete [aH] academic requirements specified in Subchapters P [G, J,] or S of this chapter (relating to Requirements for Standard Certificates and Specialized Assignments or Programs [Cer-

tification Requirement for Classroom Teachers, Certification Requirements for Educators Other Than Classroom Teachers and Educational Aides-] and Educational Aide Certificate); Chapter 239 of this title (relating to Student Services Certificates); Chapter 241 of this title (relating to Principal Certificate); Chapter 242 of this title (relating to Superintendent Certificate), or complete [aH] requirements for the certificates specified in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates) and be recommended for certification by [through] an approved educator preparation program;

(B) qualify under Subchapter O of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States);

(C) qualify under §230.437 of this title (relating to Issuance of Additional Certificates Based on Examination);

(D) qualify for a career and technical [v~~ocational~~] education certificate [certificates] based on skill and experience specified in Subchapter P of this chapter or Chapter 233 of this title [(relating to Requirements for Standard Certificates and Specialized Assignments or Programs)]; [or]

(E) qualify under Chapter 245 of this title (relating to Certification of Educators from Other Countries); or[-]

(F) qualify for certification under §232.5 of this title (relating to Temporary Teacher Certificates [General Requirements Applicable to all certificates issued, types and classes of certificates]).

[(e) To be certified to teach at the secondary level, a person completing an approved program specified in Subchapter G of this chapter must attempt all appropriate certification examinations prescribed in §230.5 of this title (relating to Educator Assessment) and pass the appropriate professional development examination and a minimum of one content specialization portion of the certification examinations-]

[(1) Secondary certification may be authorized in each subject area for which an applicant passes the appropriate content specialization examination-]

[(2) Under this subsection, a person who holds a valid elementary certificate and has at least one creditable year, as defined in Subchapter Y of this Chapter (relating to Definitions), of classroom teaching experience may be recommended for certification at the secondary level with only one teaching field identified in §230.193 of this title (relating to Teacher Certificate-Secondary)-]

[(3) The provisions of this subsection expire on September 1, 2003-]

[(d) To be certified to teach at the elementary level, a person completing an approved program specified in Subchapter G of this chapter must attempt all appropriate certification examinations prescribed by the SBEC and pass the appropriate professional development examination and the elementary comprehensive portion of the certification examinations-]

[(1) In addition to the examination requirements specified in this subsection, a person recommended for elementary certification under Option III-Bilingual Education, Option III-Generic Special Education, or Option IV-Early Childhood Education based on §230.191 of this title (relating to Preparation Required in All Programs) must complete the appropriate content specialization portion of the certification examinations-]

[(2) A person who does not pass the appropriate content specialization portions of the certification examination but satisfies all

other requirements specified in this subsection may be recommended for the appropriate standard elementary self-contained certificate.]

[(3) The provisions of the subsection expire on September 1, 2003.]

[(e) A person who satisfies all requirements for initial teacher certification except successful completion of examination requirements prescribed by the SBEC and stipulated in §230.5 of this title (relating to Educator Assessment) may be assigned on a nonrenewable permit valid for no more than one year.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

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For further information, please call: (512) 475-1497



SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §§230.431 - 230.438

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impair-

ments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; §21.048(c)(1), which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.214, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; §21.054(a), which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The proposed amendments implement the TEC, §§21.031(a), 21.041(b)(1)-(5) and (9) and (c), 21.048, 21.050, 21.054(a), 22.082, and 22.0831(f).

§230.431. *Procedures in General.*

(a) The State Board ~~for~~ [of] Educator Certification (SBEC), in compliance with SBEC [board] rules, shall issue appropriate certificates to qualified individuals who meet all requirements.

(1) The certificate shall identify the name of the holder, the class, grade levels, and subject areas of the certificate, and bear the signature of the SBEC chair [and executive director].

(2) A certificate that is issued shall be transmitted to the applicant as expeditiously as possible.

(b) Permanent records of all certificates, permits, and supporting documentation shall be maintained by the Texas Education Agency (TEA) staff [SBEC].

(c) An applicant for or holder of an educator's certificate shall provide the TEA staff [SBEC] a current [United States] mailing address. The applicant for [A certificate applicant] or holder of an educator's certificate shall notify the TEA staff [SBEC] of a change of

address within 45 calendar days of the effective date of such change, unless another rule under this title requires earlier notification.

(d) The representation of an individual's certificate status as maintained on the SBEC website is considered to be the official record of educator certification. This electronic representation of the certificate satisfies Texas Education Code, §21.053(a), which requires individuals to present their certificate prior to employment by a school district. A hard copy may be requested at the time of application.

§230.432. Candidates [Graduates] of Approved Texas [Professional] Educator Preparation Programs.

An appropriate certificate may [shall] be issued to a candidate [each individual] who completes all requirements of an approved Texas [professional] educator preparation program [and is recommended by the entity]. The candidate must complete the appropriate application and pay the designated fee. The [With the assistance of the applicant, the] certification officer representing the approved educator preparation program shall submit to the Texas Education Agency staff a recommendation for the issuance of the appropriate certificate, indicating the date on which all requirements were completed. [State Board for Educator Certification:]

[(1) an accurately completed application and recommendation form; and]

[(2) the designated fee.]

§230.433. Duplicate Certificates.

A duplicate of an active, valid certificate shall be issued when the Texas Education Agency staff [State Board for Educator Certification] receives a [an appropriately] completed application [form] and fee.

§230.434. Effective Dates of Certificates and Permit Issuance.

(a) Issuance date of a certificate [The issuance dates of certificates].

(1) [The issuance date of a certificate evaluated by the State Board for Educator Certification (SBEC) shall be the date the applicant signed the application.] The date of issuance shall not precede the date all certification requirements are completed.

(2) The issuance date of a certificate recommended by an approved [professional] educator preparation program [entity] shall be the date the recommending educator preparation program [entity] verifies that the applicant has satisfied all certification requirements.

(3) A certificate shall not become effective more than 60 calendar days before the Texas Education Agency (TEA) staff [SBEC] receives the application, and may not precede the date all certification, degree, and examination requirements are completed.

(4) A certificate shall be valid for the entire month in which it is issued.

(b) Effective date of a permit [The effective dates of permits].

(1) A permit shall become effective on the date of the assignment [the superintendent or designee signed the application], provided the TEA staff [SBEC or the appropriate education service center (ESC)] receives the application within 60 calendar days of the date of the assignment [that date].

(2) If the permit application is completed and signed by the applicant and superintendent or his or her designee on the date teaching duties begin, the application [it] may be kept in the school district's files until all materials for submission are acquired. A permit held by a school district shall not become effective more than 60 calendar days before the TEA staff [SBEC or the appropriate ESC] receives the application.

(3) The school district shall be notified regarding eligibility for the permit. Coverage will not be provided to the school district [districts] for the employment of an individual [individuals] who is [are] ineligible for the permit requested.

(c) Authority [The authority] to alter dating procedures. A certificate or permit may become effective more than 60 calendar days before the TEA staff [SBEC or the appropriate ESC] receives an application if the appropriate official assumes responsibility for the delay or documents it in writing.

§230.435. Fees for Certification Services.

(a) The fees [Fees] for certification services shall be based on a study conducted periodically by the State Board for Educator Certification of the actual costs of the services.

(b) The fees for authorizing a permit shall be paid by the requesting school district.

(c) The certificate of an applicant who does not pay the applicable certification fee, either by failing to remit full payment or by sending a check that is dishonored, shall be placed on inactive status if the applicant does not pay the full certification fee and any related processing fees within 60 calendar days from the date the notice of payment deficiency is sent to the applicant. The inactive status of a certificate will render the certificate holder ineligible for employment in a Texas public school [schools]. A certificate placed on inactive status in accordance with the provisions of this subsection will be returned to active status upon receipt of full payment of all applicable fees.

§230.436. Schedule of Fees for Certification Services.

An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

(1) Standard Educational Aide certificate--\$30.

(2) Standard certificate, additional specialization, teaching field, or endorsement/delivery system, based on recommendation by an approved educator [teacher] preparation program [entity] or State Board for Educator Certification authorization; or extension or conversion of a certificate processing fee--\$75.

(3) Probationary certificate based on recommendation by an approved educator [teacher] preparation program [entity] or Texas public school district processing fee--\$50.

(4) Duplicate of an active, valid certificate or change of name on an active, valid certificate--\$45.

(5) Addition of certification based on completion of appropriate examination--\$75.

(6) Review of a credential issued by a jurisdiction other than Texas (nonrefundable)--\$175.

(7) Temporary credential based on a credential issued by a jurisdiction other than Texas--\$50.

(8) Emergency permit, including an initial [initial] permit, reassignment on permit with a change in assignment or school district, renewal for nonconsecutive years, or renewal of permit on a hardship basis (nonrefundable)--\$55.

(9) Renewal in the school district of a permit at the same target certificate level and initial activation, or renewal in the same school district of a temporary classroom assignment permit--no fee.

(10) National criminal history check (nonrefundable)--The fee, posted on the State Board for Educator Certification website, shall vary according to the current cost of fingerprint processing and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of

Investigation. The same fee will be paid by current certified educators who are subject to a national criminal history check pursuant to the Texas Education Code, §§22.082, 22.0831, and 22.0836.

(11) Temporary Teacher certificate based on recommendation by an approved Texas public school district--\$50.

(12) Review of credentials requiring analysis and research of college or university transcript and degrees for issuance of a temporary certificate (nonrefundable)--\$175.

(13) On-time renewal of Standard Educational Aide certificate--\$10.

(14) Additional fee for late renewal of Standard Educational Aide certificate--\$5.

(15) Reactivation of an inactive Standard Educational Aide certificate--\$15.

(16) Reinstatement following restitution of child support or student loan repayment for Standard Educational Aide certificate--\$20.

(17) On-time renewal of Standard certificate (to include any paraprofessional certificates if held)--\$20.

(18) Additional fee for late renewal of Standard certificate--\$10.

(19) Reactivation of an inactive Standard certificate--\$40; except for an inactivation pursuant to §232.907 of this title (relating to Inactive Status).

(20) Reinstatement following restitution of child support or student loan repayment--\$50.

(21) Visiting International Teacher certificate--\$50.

§230.437. *Issuance of Additional Certificates Based on Examination.* General provisions. A teacher who holds a valid provisional, professional, or standard classroom teaching certificate or a valid temporary classroom teaching certificate issued under the provisions of Subchapter O of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), or Chapter 245 of this title (relating to Certification of Educators from Other Countries), and a baccalaureate [bae-he-lor's] degree may qualify for an additional teaching field or certification to teach at another level by passing the appropriate certification examination(s) for that subject. The rule shall not be used to qualify a classroom teacher for:

(1) initial certification;

(2) career and technical education [technology] certification based on skill and experience;

(3) another class of certificate, as listed in [19 TAC] Chapter 232, Subchapter A [M], of this title (relating to Types and Classes of Certificates Issued);

(4) certification for which no certification examination has been developed.

§230.438. *E-Pay Supplemental Fee.*

An applicant for a certificate or a school district requesting a permit shall pay a supplemental fee of \$2 in addition to the fees outlined in §230.436 of this title (relating to Schedule of Fees for Certification Services), for the purpose of recovering the costs of the TexasOnline Initiative [Initiative], with the exception of the following fees for certification services set forth in §230.436 of this title:

(1) On-time renewal of Standard Educational Aide certificate; [--\$10]

(2) Additional fee for late renewal of Standard Educational Aide certificate; [--\$5]

(3) Reactivation of an inactive Standard Educational Aide certificate; [--\$15]

(4) On-time renewal of Standard certificate (to include any paraprofessional certificates if held); [--\$20]

(5) Additional fee for late renewal of Standard certificate; and [--\$10]

(6) Reinstatement following restitution of child support or student loan repayment; [--\$50]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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State Board for Educator Certification

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SUBCHAPTER O. TEXAS EDUCATOR CERTIFICATES BASED ON CERTIFICATION AND COLLEGE CREDENTIALS FROM OTHER STATES OR TERRITORIES OF THE UNITED STATES

19 TAC §§230.461 - 230.464

The amendments are proposed under the Texas Education Code (TEC), §21.040(6), which allows the State Board for Educator Certification (SBEC) authority to develop and implement policies that define responsibilities of the SBEC; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies

with the standards specified in subsection (b) of this section; §21.048(c)(1), which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.214, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; §21.052(a), which states that the SBEC may issue a certificate to an educator who holds a degree issued by an institution accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board or a degree issued by an institution located in a foreign country, if the degree is equivalent to a degree described by §21.052(a)(1)(A), holds an appropriate certificate or other credential issued by another state or country, and performs satisfactorily on the examination prescribed under the TEC, §21.048, or, if the educator holds a certificate or other credential issued by another state or country, an examination similar to and at least as rigorous as that described by §21.052(a)(1)(A) administered to the educator under the authority of that state; §21.052(b), which states that for purposes of §21.052(a)(2), a person is considered to hold a certificate or other credential if the credential is not valid solely because it has expired; §21.052(c), which states that the SBEC may issue a temporary certificate under this section to an educator who holds a degree required by §21.052(a)(1) and a certificate or other credential required by §21.052(a)(2) but who has not satisfied the requirements prescribed by §21.052(a)(3); §21.052(d), which states that a temporary certificate issued under §21.052(c) to an educator employed by a school district that has constructed or expanded at least one instructional facility as a result of increased student enrollment due to actions taken under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) may not expire before the first anniversary of the date on which the SBEC completes the review of the educator's credentials and informs the educator of the examination or examinations under the TEC, §21.048, on which the educator must perform successfully to receive a standard certificate; and §21.054(a), which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

The proposed amendments implement the TEC, §§21.040(6), 21.041(b)(4) and (5) and (c), 21.048, 21.050, 21.052, and 21.054(a).

§230.461. *General Provisions.*

(a) A Texas educator certificate may be issued to an individual who holds a college degree and an appropriate certificate or credential issued by the authorized licensing agency in another state or territory of the United States and who meets appropriate requirements specified in §230.413 of this title (relating to General Requirements) and elsewhere in this subchapter.

(b) The degree held by an applicant from another state or territory of the United States must be equivalent to at least a baccalaureate [~~bachelor's~~] degree issued by an institution of higher education that at the time was accredited or otherwise approved by a state department of education, a recognized governmental organization, or an [a recognized regional] accrediting organization recognized by the Texas Higher Education Coordinating Board.

(c) The certificate or other credential issued by the authorized licensing agency in another state or territory of the United States may not be a temporary permit, a credential issued by a city or school district, or a certificate for which academic or other program deficiencies are indicated. Specific examination or renewal requirements shall not be considered academic deficiencies.

(d) A statement, approval letter, or certification entitlement card issued by the authorized licensing agency in another state or territory of the United States specifying eligibility for full certification upon employment or completion of specified examination requirements shall have the same standing as a certificate.

(e) The certificate and areas of certification issued by the authorized licensing agency in another state or territory of the United States must be equivalent to a certificate and certification areas approved by the State Board for Educator Certification (SBEC). The Texas Education Agency (TEA) staff [~~executive director of SBEC~~] shall identify the certification areas for which the applicant qualifies in Texas. The certificate(s) for which the applicant qualifies may be issued by the TEA staff under the authority of the SBEC [~~executive director~~].

§230.462. *Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States.*

(a) An applicant for a standard Texas certificate based on a certificate issued in accordance with §230.461 of this title (relating to General Provisions) must pass the appropriate examination requirements prescribed in the Texas Education Code (TEC), [~~under~~] §21.048(a), [~~Texas Education Code (relating to certification examinations)~~] and §230.5 of this title (relating to Educator Assessment) or achieve an acceptable level of performance on an examination(s) similar to and at least as rigorous as that prescribed in the TEC, [~~under~~] §21.048(a), [~~Texas Education Code~~] and §230.5 of this title that was administered to the applicant under the authority of another state or territory of the United States. The applicant shall verify in a manner determined by the Texas Education Agency staff [~~executive director~~] the level of performance on acceptable examinations administered under the authority of another state or territory of the United States.

(b) If all certification requirements are met except the appropriate examination requirements, the applicant may request issuance of a one-year certificate in one or more certification areas authorized on the out-of-state certificate. An applicant who holds only a student services, principal, or superintendent certificate issued in accordance with Chapter 239 of this title (relating to Student Services Certificates), with the exception of Subchapter E (relating to Master Teacher Certificate); Chapter 241 of this title (relating to Principal Certificate); or Chapter 242 of this title (relating to Superintendent Certificate) may be issued the equivalent Texas certificate. The applicant must verify two creditable years of service in an Early Childhood-Grade 12 public or private school, as defined in Chapter 153, Subchapter CC, of this title (relating

to Commissioner's Rules on Creditable Years of Service), in the specific student services or administrative area sought.

[(1) An applicant who holds a special subject certificate issued in accordance with §230.461 of this title (relating to General Provisions) may be issued the equivalent Texas certificate in that special subject area.]

[(2) An applicant who holds a professional service certificate issued in accordance with §230.461 of this subchapter may be issued the equivalent Texas certificate in that professional service area. The applicant must verify three creditable years of public or private school experience, as defined in Subchapter Y of this chapter (relating to Definitions), in the professional service area.]

(c) After satisfying all requirements, including all appropriate examination requirements, the applicant is eligible to receive the appropriate standard certificate [Standard Certificate] issued under Chapter 232, Subchapter A [M] of this title (relating to [the] Types and Classes of Certificates Issued).

(d) An applicant issued a one-year certificate under this section who does not complete the appropriate examination requirements to establish eligibility for a standard certificate [Standard Certificate] during the validity of the one-year certificate, is not eligible for any type of certificate or permit authorizing employment for the same certified level or areas until he or she has satisfied the appropriate examination requirements. If examination requirements are not met during the validity period of the one-year certificate due to circumstances beyond the control of the educator, the employing school district may request an extension not to exceed one calendar year in length.

(e) An employing superintendent may apply for a nonrenewable permit for a teacher who does not pass the pedagogy and professional responsibilities portion of the certification examinations [professional development portion of the Examination for the Certification of Educators in Texas (ExCET)] but does pass the appropriate content specialization portions of the examination [exam] during the validity of the one-year certificate. The nonrenewable permit shall be valid for no more than 12 months from the date the individual first attempts the pedagogy and professional responsibilities examination [professional development portion of the ExCET].

(f) An applicant shall not be required to complete the content specialization portion of the certification examination [ExCET] in a certification area for which he or she does not seek standard certification.

(g) An applicant issued a one-year certificate under this section who, during or subsequent to the validity of the certificate, establishes eligibility for a standard certificate [Standard Certificate] may apply for:

(1) a new one-year certificate in another certification area based on an acceptable certificate from another state or territory of the United States; or

(2) a second one-year certificate in an area previously authorized on a one-year certificate, provided the applicant was not assigned to the area and has not attempted the appropriate examination requirements for that area.

[(h) An initial one-year certificate whose validity was extended under the emergency adoption (published in the August 24, 2001, issue of the Texas Register (26 TexReg 6191)), emergency amendment/correction (October 12, 2001, issue of the Texas Register (26 TexReg 7962)), or emergency extension (November 30, 2001, issue of the Texas Register (26 TexReg 9679)) of amended §230.462 of this title is hereby ratified according to the terms of its extension.

The determination by the executive director or a designee of the validity period of a one-year certificate so extended shall be final and unappealable. This subsection expires March 1, 2004.]

[(i) An individual issued an initial one-year certificate under this chapter during the 2001-2002 school year with an expiration after September 1, 2002, in a certification area slated for deletion on September 1, 2002, will be permitted to take the certification examinations required for the deleted certificate until August 31, 2003, and apply for the corresponding certificate. The provisions of this subsection do not extend the validity period of the one-year certificate issued under this chapter.]

§230.463. *Requests for Evaluation of College Credentials.*

(a) A request [Requests] to evaluate an applicant's credentials for areas of certification that are not identified on the certificate issued in accordance with §230.461 of this title (relating to General Provisions) must be directed to an approved Texas educator preparation program. The appropriate Texas certificate will be issued upon recommendation by the educator preparation program.

(b) An individual who does not hold a certificate issued in accordance with §230.461 of this title [(relating to General Provisions)] must have his or her credentials evaluated through an approved Texas educator preparation program and be recommended by the educator preparation program for certification.

§230.464. *Application Procedures.*

An individual [Individuals] who meets [meet] the requirements of this subchapter may apply for a review of his or her credentials and issuance of the appropriate Texas certificate according to procedures approved by the Texas Education Agency staff [executive director]. A review of credentials and payment of related fees are required for all applicants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jerel Booker

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State Board for Educator Certification

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For further information, please call: (512) 475-1497

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SUBCHAPTER P. REQUIREMENTS FOR STANDARD CERTIFICATES AND SPECIALIZED ASSIGNMENTS OR PROGRAMS

19 TAC §230.481, §230.484

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires

the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid.

The proposed repeals implement the TEC, §21.031(a) and §21.041(b)(1)-(3).

§230.481. *General Provisions.*

§230.484. *Eligibility Requirements for Specialized Assignments or Programs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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State Board for Educator Certification

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19 TAC §§230.481 - 230.483

The new section and amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid.

The proposed new section and amendments implement the TEC, §21.031(a) and §21.041(b)(1)-(3).

§230.481. *Teacher Certificate--Secondary (Grades 6-12) and Teacher Certificate--All Level (Prekindergarten-Grade 12).*

(a) The Teacher Certificate--Secondary shall be based on completion of an educator preparation program as described in Chapter 228 of this title (relating to Requirements for Educator Preparation Programs). An educator preparation program for this certificate may be offered in art, French, German, Latin, Spanish, and other languages as approved by the State Board for Educator Certification (SBEC). Each educator preparation program that recommends a candidate for language certification must assess the candidate's oral proficiency in accordance with procedures, criteria, and passing scores specified by the SBEC.

(b) The provisions of subsection (a) of this section shall expire on September 1, 2011, with the exception of the area of academic specialization for art, which shall expire on September 1, 2009.

(c) The Teacher Certificate--All-Level shall be based upon completion of an educator preparation program as described in Chapter 228 of this title (relating to Requirements for Educator Preparation Programs). The area of academic specialization for the teacher certificate--all-level shall be art.

(d) The provisions of subsection (c) of this section shall expire on September 1, 2009.

§230.482. *Specific Requirements for Standard Certificates and Endorsements.*

(a) The following certificates require completion of an approved educator preparation program offered under §230.481 of this title (relating to Teacher Certificate--Secondary (Grades 6-12) and Teacher Certificate--All Level (Prekindergarten-Grade 12) [Subchapter G of this chapter (relating to Certification Requirement for Classroom Teachers)]:

(1) standard classroom teacher certificate--secondary; and

(2) standard classroom teacher certificate--all level; [;]

[(3) standard special education certificates;]

[(4) standard agricultural science and standard horticultural science certificates; and]

[(5) standard home economics certificate.]

(b) The driver education endorsement will be issued upon evidence of completion of requirements specified in §75.1002 of this title (relating to Driver Education Teachers). The driver education endorsement requires completion of an approved educator preparation program offered under this section.

[(b) The standard marketing education certificate requires one of the following:]

[(1) completion of an approved program offered under §230.198 of this title (relating to Vocational Marketing Education Certificates); or]

[(2) completion of requirements in §230.483(b) of this title (relating to Specific Requirements for Standard Career and Technology Certificates Based on Experience and Preparation).]

[(c) All endorsements require completion of an approved program offered under §230.199 of this title (relating to Endorsements) or completion of requirements under provisions of §230.437 of this title (relating to Issuance of Certificates Based on Examination).]

[(d) The provisions of subsection (a)(5) of this section shall expire on September 1, 2005.]

[(e) The provisions of subsection (a)(2), (3), and (4), and subsections (b) and (c) of this section shall expire on September 1, 2007.]

§230.483. *Specific Requirements for Standard Career and Technical Education [Technology] Certificates Based on Experience and Preparation.*

(a) Health Science Technology Education: Grades 8-12 certificate. A standard Health Science Technology Education: Grades 8-12 certificate shall be based on experience and academic preparation in the skill area.

(1) The standard Health Science Technology Education: Grades 8-12 certificate shall require the following:

(A) a baccalaureate degree from an accredited institution of higher education;

(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions prac-

itioner. The preparation program for licensure, certification, or registration must require at least two years of college-level education;

(C) approval, by the certification officer of an approved educator preparation program, of two years of wage earning experience using the licensure requirement described in subparagraph (B) of this paragraph, in addition to that required to be registered or certified; and

(D) one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service), on an emergency permit or probationary certificate in the area of health science technology education.

(2) The standard Health Science Technology Education: Grades 8-12 certificate curricula shall be based on the standards approved by the State Board for Educator Certification. A candidate for this certificate must pass the appropriate certification examinations.

[(a) Standard health science technology certificate.]

[(1) The standard health science technology certificate shall be based on preparation and experience in the skill area and qualify the teacher to teach state approved health science technology education courses.]

[(2) Certification shall be based on experience and academic preparation in the skill area and require the following:]

[(A) a bachelor's degree or an associate's degree from an accredited institution;]

[(B) licensure, certification, or registration by a nationally recognized accrediting agency as a professional practitioner in one or more health occupations for which instruction is offered. The preparation program for licensure or certification must require at least two years of formal education;]

[(C) completion of State Board for Educator Certification (SBEC) requirements in the United States and Texas Constitutions; and]

[(D) approval, by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate, of two years of wage earning experience in a licensed hospital or health agency, in addition to that required to be registered or certified.]

[(3) The standard health science technology certificate shall require a professional development sequence that includes the following:]

[(A) developing, organizing, and using instructional materials;]

[(B) methods of teaching vocational subjects;]

[(C) human relations for vocational industrial instructors;]

[(D) aims and objectives of vocational education;]

[(E) organizing and coordinating vocational industrial cooperative programs;]

[(F) problems in industrial cooperative education; and]

[(G) two creditable years, as defined in Subchapter Y of this chapter (relating to Definitions), of teaching experience on emergency permits in the area of health science.]

[(4) Certification shall be based on experience and academic preparation in the skill area and require the following:]

[(A) a bachelor's degree from an accredited institution;]

[(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner. The preparation program for licensure, certification, or registration must require at least two years of formal education;]

[(C) approval, by the certification officer of an approved teacher preparation program, of two years of wage earning experience utilizing the licensure requirement described in subparagraph (B) of this paragraph, in addition to that required to be registered or certified.]

[(5) The standard health science technology certificate curricula shall be based on the standards approved by the State Board for Educator Certification. Candidates for this certificate must pass the appropriate certification assessments.]

[(6) Paragraphs (4) and (5) of this subsection become effective September 1, 2002 and supersede paragraphs (2) and (3) of this subsection effective September 1, 2006. During the transition period from September 1, 2002, through August 31, 2006, the preparation program shall determine whether the candidate will be recommended to SBEC for a certificate that complies with either paragraphs (2) and (3) of this subsection or paragraphs (4) and (5) of this subsection.]

[(b) Standard marketing education certificate.]

[(1) The standard marketing education certificate may be based on the program requirements specified in Subchapter G of this chapter (relating to Certification Requirement for Classroom Teachers) or preparation and experience in the skill area.]

[(2) Certification based on preparation and experience in the skill area shall require:]

[(A) a bachelor's degree from an accredited institution with six semester hours of courses in retailing and marketing;]

[(B) completion of SBEC requirements in the United States and Texas Constitutions;]

[(C) two years of wage-earning experience approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in one or more of the marketing occupations;]

[(D) 12 semester hours of professional development from an institution with an approved program in marketing education that includes the following:]

[(i) history and philosophy of vocational education;]

[(ii) methods of teaching marketing and distributive education;]

[(iii) organizing and managing marketing education programs; and]

[(iv) techniques for coordinating marketing education programs; and]

[(E) two creditable years, as defined in Subchapter Y of this chapter, of teaching experience on emergency permits in the area of marketing education.]

[(3) The standard marketing education certificate shall establish eligibility to teach cooperative training, coordinated vocational-academic education, pre-employment laboratory, and vocational education for the handicapped in marketing and distributive education.]

[(4) The provisions of this subsection expire on September 1, 2007.]

[(c) Standard office education certificate.]

~~[(1) Certificates issued: The standard office education certificate shall be based on preparation and experience in the skill area and professional development. The certificate shall be required to teach office education courses taught by the cooperative or preemployment laboratory method of instruction.]~~

~~[(2) Academic specialization: The standard office education certificate shall require the following:]~~

~~[(A) a bachelor's degree in business/business education or the equivalent of a minor in the course area to be taught;]~~

~~[(B) completion of SBEC requirements in the United States and Texas Constitutions; and]~~

~~[(C) one of the following:]~~

~~[(i) two years of wage-earning experience in an office occupation approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in office education; or]~~

~~[(ii) three to six semester hours of credit for an office occupation internship approved by a college or university approved to prepare teachers for the vocational certificate in office education.]~~

~~[(3) Professional development: The professional development requirements for the provisional office education certificate shall be completed in an approved institution and shall require the following:]~~

~~[(A) 6-12 semester hours of professional development that include:]~~

~~[(i) instructional strategies;]~~

~~[(ii) managing office education programs; and]~~

~~[(iii) six semester hours in the course area to be taught that are recommended by the college or university approved to prepare teachers for office education;]~~

~~[(B) completion of a workshop for new teachers sponsored by the Texas Education Agency (TEA); and]~~

~~[(C) one creditable year, as defined in Subchapter Y of this chapter, of teaching experience on an emergency permit for a teacher who does not have one or more years of teaching experience at the secondary level.]~~

~~[(d) Standard occupational orientation certificate.]~~

~~[(1) General provisions: The standard occupational orientation certificate shall be based on preparation and experience in occupational fields for which vocational education is offered and professional development.]~~

~~[(2) Academic specialization: The standard occupational orientation certificate shall require that an individual:]~~

~~[(A) hold a bachelor's degree from an accredited institution;]~~

~~[(B) complete SBEC requirements in United States and Texas Constitutions;]~~

~~[(C) to teach occupational investigation, have two years of wage-earning experience other than teaching, approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in one or more occupations for which occupational education may be conducted; and]~~

~~[(D) to teach vocational education for the handicapped (VEH) occupational exploration, have two years of wage-earning experience other than teaching, approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in the occupational field or cluster for which instruction is offered.]~~

~~[(3) Professional development: The professional development requirements shall be completed in an approved institution and must include:]~~

~~[(A) history and principles of vocational education;]~~

~~[(B) methods and media for teaching vocational subjects;]~~

~~[(C) occupational and vocational education information;]~~

~~[(D) planning and organizing programs of vocational guidance;]~~

~~[(E) organizing and managing the class and laboratory; and]~~

~~[(F) two creditable years, as defined in Subchapter Y of this chapter, of successful teaching experience on emergency permits in the area of vocational occupational orientation.]~~

~~[(4) The provisions of this subsection expire on September 1, 2005]~~

~~[(e) Provisional trades and industry certificates: A standard trades and industry certificate shall be based on preparation and experience in the skill areas to be taught and completion of specified professional development course work.]~~

~~[(1) Standard trades and industry - preemployment laboratory certificate.]~~

~~[(A) Academic specialization.]~~

~~[(i) Option I: Option I requires:]~~

~~[(I) a bachelor's degree from an accredited institution;]~~

~~[(II) completion of SBEC requirements in the United States and Texas Constitutions; and]~~

~~[(III) three years of full-time wage-earning experience in one or more approved occupations for which instruction is offered. The experience must be approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate.]~~

~~[(ii) Option II: Option II requires:]~~

~~[(I) a high school diploma or the equivalent;]~~

~~[(II) completion of SBEC requirements in the United States and Texas Constitutions; and]~~

~~[(III) five years of full-time wage-earning experience in one or more approved occupations for which instruction is offered, three of which must be in the predominate subject area. The experience must be approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate.]~~

~~[(iii) Cosmetology teachers: Cosmetology teachers approved under Options I or II must satisfy the following additional requirements:]~~

~~{{(I) have three years of full-time wage-earning experience as a licensed cosmetologist; and}}~~

~~{{(II) hold a current cosmetology instructor's license issued by the Texas Cosmetology Commission.}}~~

~~{{(B) Professional development. The professional development requirements shall be completed in an approved institution and consist of:}}~~

~~{{(i) completion of a professional development sequence; that includes:}}~~

~~{{(I) developing, organizing, and using instructional materials;}}~~

~~{{(II) methods of teaching vocational subjects;}}~~

~~{{(III) human relations for vocational industrial instructors;}}~~

~~{{(IV) aims and objectives of vocational education;}}~~

~~{{(V) organizing and managing instructional environment; and}}~~

~~{{(VI) analysis and coursemaking; and}}~~

~~{{(ii) two creditable years, as defined in Subchapter Y of this chapter, of successful experience teaching preemployment laboratory programs on emergency permits in the area of the certificate sought.}}~~

~~{{(2) Standard trades and industry—cooperative training certificate.}}~~

~~{{(A) Academic specialization. The academic specialization requires:}}~~

~~{{(i) a bachelor's degree from an accredited institution;}}~~

~~{{(ii) completion of SBEC requirements in the United States and Texas Constitutions;}}~~

~~{{(iii) two creditable years, as defined in Subchapter Y of this chapter, of teaching experience in a secondary school; and}}~~

~~{{(iv) three years of full-time wage-earning experience in one or more approved occupations for which instruction is offered; one year for which the individual must be continuously employed in a single occupation or trade. The experience must be approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate.}}~~

~~{{(B) Professional development. The professional development requirements shall be completed in an approved institution and consist of:}}~~

~~{{(i) completion of a professional development sequence that includes:}}~~

~~{{(I) developing, organizing, and using instructional materials;}}~~

~~{{(II) methods of teaching vocational subjects;}}~~

~~{{(III) human relations for vocational industrial instructors;}}~~

~~{{(IV) aims and objectives of vocational education;}}~~

~~{{(V) organizing and coordinating vocational industrial cooperative education programs; and}}~~

~~{{(VI) problems in industrial cooperative education; and}}~~

~~{{(ii) two creditable years, as defined in Subchapter Y of this chapter, of successful experience teaching cooperative training programs on emergency permits in the area of the certificate sought.}}~~

~~(b) {{(f)}} Trade and Industrial Education: Grades 8 - 12 [Standard trade and industrial education] certificate. A standard Trade and Industrial Education: Grades 8 - 12 [trade and industrial education] certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.~~

~~(1) The standard Trade and Industrial Education: Grades 8-12 certificate shall require the following academic [Academic] preparation and wage-earning experience.~~

~~(A) Option I. An individual must: [Option I requires:]~~

~~(i) hold a baccalaureate [bachelor's] degree from an accredited institution of higher education; and~~

~~(ii) have three years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an educator [a teacher] preparation program approved to prepare teachers for the trade and industrial education certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.~~

~~(B) Option II. An individual must: [Option II requires:]~~

~~(i) hold an associate [associates'] degree from an accredited institution of higher education; and~~

~~(ii) have three years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an educator [a teacher] preparation program approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 [trade and industrial education] certificate.~~

~~(C) Option III. An individual must: [Option III requires:]~~

~~(i) hold a high school diploma or the equivalent; and~~

~~(ii) have five years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an educator [a teacher] preparation program approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 [trade and industrial education] certificate.~~

~~(2) The standard Trade and Industrial Education: Grades 8-12 certificate shall require current licensure [Current licensure, certification, or registration by a state or nationally recognized accrediting agency as a professional practitioner in one or more approved occupations for which instruction is offered. Licensure], certification, or registration by a nationally recognized accrediting agency [must be] based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing of the appropriate National Occupational Competency Testing Institute (NOCTI) assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.~~

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title, on an emergency permit or probationary certificate in the specific area of trade and industrial education.

{(3) This subsection becomes effective September 1, 2002, and supersedes subsection (e) of this section effective September 1, 2005. During the transition period from September 1, 2002, through August 31, 2005, the preparation program shall determine whether the candidate will be recommended to SBEC for a certificate that complies with either this subsection or subsection (e) of this section.}

(c) ~~{(g)}~~ Career and technical education certificate. Approval of career and technical ~~[vocationa]l~~ education teachers shall be based on prior experience and preparation in a skill area.

(1) Prospective career and technical ~~[vocationa]l~~ education teachers shall submit a statement of qualifications detailing prior experience and skill area preparation to the educator preparation program ~~[employing superintendent or certification officer of a college]~~ approved to prepare teachers for the career and technical education ~~[vocationa]l~~ certificate sought. The ~~[superintendent or]~~ certification officer of the educator preparation program shall review the applicant's statement of qualifications to determine whether the applicant meets the appropriate approval criteria specified in this subsection.

(2) Under this subsection ~~[section]~~, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40, but at least 20, hours per week shall be calculated at a 50% rate in determining years of full-time experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time experience.

(3) Postsecondary and proprietary school teaching experience in the specific occupational area for which the candidate is seeking certification may be counted on a year-for-year basis in lieu of on-the-job experience. Proprietary schools must be accredited or otherwise approved by the Texas Workforce Commission. Recency of experience, as well as current licensure, certification, or registration by a state or nationally recognized accrediting agency must be met.

~~{(3) A deficiency plan specifying certification requirements shall be prepared by a college or university approved to offer course work for the vocational certificate sought.}~~

~~{(4) If the approved applicant is employed by the school district, the superintendent or designee shall apply for an emergency permit within 30 days of employment according to §230.504 of this title (relating to Specific Requirements for Initial Emergency Permits).}~~

~~{(h) Teachers assigned to Career Investigations and Career Connections}~~

~~{(1) Teachers assigned to Career Investigations/Career Connections must hold a teacher certificate in any of the Career and Technology program areas; and shall participate in a Texas Education Agency approved two-hour workshop for beginning Career Investigation/Career Connections teachers prior to teaching the course.}~~

~~{(2) Teachers assigned to Career Investigations/Career Connections must also attend and participate in a Texas Education Agency sponsored Career and Technology Education Professional Development Conference prior to assignment.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900621

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 475-1497

SUBCHAPTER Q. PERMITS

19 TAC §§230.501 - 230.507, 230.512

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on information that is disaggregated with respect to sex and ethnicity and that includes results of the certification examinations prescribed under the TEC, §21.048(a), and performance based on the appraisal system for beginning teachers adopted by the SBEC; §21.045(b), which specifies that each educator preparation program shall submit data elements as required by the SBEC for an annual performance report to ensure access and equity; §21.045(c), which requires the SBEC to propose rules establishing performance standards for the Accountability System for Educator Preparation for accrediting educator preparation programs; §21.045(d), which specifies that the executive director of the SBEC shall appoint an oversight team of educators to make recommendations and provide assistance to educator preparation programs that do not meet accreditation standards; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; §21.048(c)(1), which states

that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048.

The proposed amendments implement the TEC, §§21.031(a), 21.041(b)(1), (2), and (4), 21.044, 21.045, and 21.048.

§230.501. General Provisions.

(a) In accordance with the provisions of this subchapter, emergency permits are issued under the authority of the State Board for Educator Certification (SBEC). ~~[The Board has delegated to regional education service centers the authority to receive applications and process emergency permits.]~~

(b) Under this subchapter, a superintendent or his or her designee who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual who does not have one of the appropriate credentials required for the assignment as specified in Chapter 231 of this title (relating to Assignment of Public School Personnel) ~~[Subchapter U of this chapter (relating to Assignment of Public School Personnel)]~~. The superintendent or his or her designee must:

(1) document the efforts the school district has taken to employ a fully certified individual ~~[person]~~ in the position for which an emergency ~~[a]~~ permit is activated;

(2) apply for an emergency permit ~~[by submitting the required documentation to the appropriate education service center (ESC)]~~ when a vacant position is filled with an uncertified or inappropriately certified individual who will serve as the teacher of record or will serve in the assignment for more than 30 consecutive instructional days. The application must be submitted within 45 instructional days of the date of assignment; ~~[-]~~

(3) verify that the school district maintains a support system, has assigned a trained mentor, and will provide release time as needed to assist the individual serving on an emergency permit. A school district shall not be required to provide a mentor for a degreed, certified teacher assigned on an emergency permit ~~[status]~~ if the teacher has one or more creditable years experience within the school district, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) ~~[Subchapter Y of this Chapter (relating to Definitions)]~~; and

(4) verify that the individual ~~[teacher]~~ for whom the emergency permit is activated has been advised of the SBEC ~~[State Board for Educator Certification (SBEC)]~~ rules regarding permits and permit renewal requirements in this subchapter.

(c) A certified teacher must consent to the activation of an emergency permit and be advised of the conditions of the emergency permit. A teacher who refuses to consent to activation of an emergency permit may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the emergency permit. However, a teacher's refusal to consent shall not impair a school district's right to implement a necessary reduction in force or other personnel actions in accordance with local school district policy.

~~[(e) The provisions of this subsection apply to a degreed, certified teacher who was employed by a district in the previous year or semester in an assignment for which he or she was fully certified.]~~

~~[(1) The teacher may not be assigned to a position that requires activating a permit unless:]~~

~~[(A) the teacher has given written consent to the activation of the permit; or]~~

~~[(B) because of fluctuations in enrollment or changes in course offerings, the teacher's previous assignment no longer exists and no alternative assignment for which the teacher is fully certified is available on that campus. If a permit is activated for a teacher under these circumstances, the teacher shall be offered the opportunity to return to his or her previous assignment or an alternative assignment for which the teacher is fully certified on that campus as soon as such an assignment is available. If a teacher accepts the assignment, the actual transfer of duties shall occur not later than the beginning of the next academic year.]~~

~~[(2) If a permit under this subsection is activated for a temporary staffing condition within 30 days of the opening of the school year or later during the contract year, the teacher is exempt from the requirement to complete additional coursework or examination requirements for certification for the remainder of the contract year for which the permit is activated. This exemption is not renewable, and a teacher continuing on an emergency permit for a second year must meet the full requirements of an emergency permit. A teacher who refuses to consent to activation of a permit under this subsection may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the permit. However, a teacher's refusal to consent shall not impair a district's right to implement a necessary reduction in force or other personnel actions in accordance with local district policy.]~~

~~(d) An emergency [A] permit is authorized for the school district for a specific assignment and is not the property of the individual for whom the emergency permit was activated.~~

~~(e) If an emergency [a] permit authorized by the SBEC is not used, the school district shall notify the Texas Education Agency (TEA) staff [appropriate education service center (ESC)] in writing.~~

~~(f) An emergency [A] permit may be authorized on a hardship basis for an individual who does not meet all emergency permit requirements as listed in §§230.503(1), 230.504, and 230.506 [§230.503(1), §230.504, and §230.506] of this title (relating to General Eligibility Requirements for Emergency Permits, Specific Requirements for Initial Emergency Permits, and Renewal Requirements) only if approval has been granted and written notification received from the SBEC or TEA staff [a designated representative]. The school district must:~~

~~(1) document local conditions requiring the assignment of an individual who does not meet emergency permit requirements;~~

~~(2) verify that the deficiencies for the certificate sought do not exceed 36 semester credit hours; and~~

~~(3) verify that the individual will be enrolled in the first available course listed on the deficiency plan.~~

~~(g) The school district is not required to comply with the requirements of this subchapter if an uncertified individual is assigned for a certified teacher that will be absent for more than 30 consecutive instructional days due to documented health related reasons and has expressed the intention to return to the assignment. The school district must comply with the Texas Education Code, §21.057 [§230.532(e) of this title (relating to Required Parent Notification of Noncertified Teachers)].~~

§230.502. Validity of Emergency Permits.

~~(a) The validity date [dates] of an emergency permit [permits] activated and authorized under this subchapter is [are] specified in~~

§230.434 of this title (relating to Effective Dates of Certificates and Permit Issuance).

(b) An emergency permit is valid for the remainder of the school year for which it is activated and authorized by the State Board for Educator Certification (SBEC). The emergency permit must be submitted to the Texas Education Agency staff [appropriate education service center (ESC)] within 45 instructional days from the date of assignment.

(c) An emergency permit authorized by the SBEC is valid for service only in the requesting school district and only for the assignments indicated on the emergency permit application.

(d) The employment of an individual on [the basis of] an emergency permit may not exceed three years in the same assignment. The [An] individual may serve in a specific assignment no more than two additional school years beyond the initial emergency permit. To continue beyond the initial emergency permit year, the individual must comply with the renewal provisions specified in §230.506 of this title (relating to Renewal Requirements). To continue employment in the assignment beyond the validity of the emergency permit, the individual must hold the appropriate certificate. An individual may not serve as a classroom teacher of record in the Texas public school [schools] for more than three school years, without obtaining initial, standard certification.

§230.503. *General Eligibility Requirements for Emergency Permits.* An individual for whom an emergency permit is activated must meet the following criteria.

(1) The individual must hold a baccalaureate [bachelor's] degree from an accredited institution of higher education.

(A) For a career and technical education [technology] assignment requiring certification based on both a baccalaureate [bachelor's] degree and experience in the occupational area to be taught, such as health science technology education or marketing education, the individual must have completed the degree requirement and have specified work experience.

(B) For trade and industrial education [certain career and technology] assignments [requiring certification based on skill and experience], the individual must have specified work experience in lieu of a baccalaureate degree.

(2) The individual must be at least 18 years old.

(3) The individual must be able to speak and understand the English language sufficiently to use it easily and readily in conversation and teaching, as specified in Subchapter M of this chapter (relating to Certification of Educators in General). [The individual must be of good moral character.]

(4) The individual must be of good moral character. The State Board for Educator Certification [SBEC] may refuse to authorize an emergency permit for an individual [a person] who has been convicted of a felony or misdemeanor crime that directly relates to the duties and responsibilities of the teaching profession.

§230.504. *Specific Requirements for Initial Emergency Permits.*

(a) General Provisions. An individual for whom an emergency permit is activated must:

(1) have completed the appropriate semester credit hours or equivalent contact hours required for the emergency permit sought as specified in this section; or, for a degreed, certified teacher [teachers], have passed the appropriate content specialization portions of the appropriate certification examination [Examination for the Certification of Educators in Texas (ExCET)] required for the target certificate; and

(2) have satisfied the appropriate experience requirement specified in this section for the emergency permit sought.

(b) Assignments to elementary grades (Early Childhood-Grade 6) (general education [regular students]).

(1) Elementary (Early Childhood-Grade 6) [Self-contained classroom, Grades 1-6]. The individual must have completed 12 semester credit hours in a combination of subjects directly related to the elementary curriculum, or 12 semester credit hours in elementary education, or any combination of these areas of study. Subjects related to the elementary curriculum include, but are not limited to, art, English language arts, health, mathematics, music, physical education, reading, science, social studies, technology applications, or theatre arts.

[(2) Self-contained classroom, prekindergarten-kindergarten.]

[(A) An individual who is not certified must have completed 12 semester hours emphasizing instructional areas for early childhood education.]

[(B) An individual who is certified must hold an elementary, special education, or vocational home economics certificate (degree required).]

(2) [(3)] Foreign language in the elementary grades (Early Childhood-Grade 6).

(A) An individual must have current [secondary] certification with a teaching field in the language to be taught.

(B) An individual who holds a secondary certificate with a teaching field in the language to be taught must have completed six semester credit hours of elementary education before the assignment is continued.

(C) Continued assignment must be documented on the individual's teacher service record.

(D) An individual who holds a Generalist: Early Childhood-Grade 4 or Generalist: Early Childhood-Grade 6 certificate with a passing score on the appropriate oral proficiency test in the target language may qualify for an emergency permit. To continue in the assignment, the individual must pass the written content specialization portion of the certification examination.

(E) [(D)] Requirements specified in §230.506 of this title [subchapter] (relating to Renewal Requirements) do not apply to this assignment.

(c) Assignments to secondary grades (Grades 7-12) (general education [regular students]).

(1) An emergency permit may be activated for an individual not certified at the secondary level provided the individual has completed:

(A) 24 semester credit hours in the subject to be taught; or

(B) 24 semester credit hours toward a composite teaching field appropriate for the assignment, including at least six semester credit hours in the subject to be taught.

(2) A Temporary Classroom Assignment Permit [temporary classroom assignment permit] (TCAP) may be activated for a teacher certified at the secondary level assigned to a subject area not covered by the certificate. The school district is not required to file the TCAP with the Texas Education Agency staff [State Board for Educator Certification (SBEC) or appropriate education service center

(ESC)]. The TCAP must be maintained in the school district personnel records.

(A) A TCAP must be activated for an individual who is assigned to one or more class periods in an area not covered by the certificate held. The individual must have completed six semester credit hours in the specific subject area(s) to be taught. A TCAP may be activated for no more than four class periods.

(B) The TCAP is valid for one school year and is not renewable except in the event that the TCAP was issued for fewer than [that] 90 calendar days before the last day of student instruction in the prior school year.

[(d) Technology Applications in Grades 7 and 8:]

[(1) If an individual is not certified, he or she must have completed 24 semester hours in computer science:]

[(2) If an individual is currently certified based on a bachelor's degree, he or she must:]

[(A) have completed three semester hours directly related to information processing technologies; or]

[(B) have achieved computing competency by having completed any combination of vendor-provided training; ESC workshops; or higher education course work.]

[(d) [(e)] Assignments to all grade levels (Early Childhood-Grade 12) (general education [regular students]).]

(1) An individual must have completed 24 semester credit hours in the subject area[; including six semester hours directly related to elementary grades and six semester hours directly related to secondary grades].

(2) This section will apply to all general education subject areas that are available as Early Childhood-Grade 12 certificates.

[(2) Assignments in this category are limited to the areas of art, music, physical education, and speech communication-theater arts:]

[(e) [(f)] Assignments to career and technical education [technology] programs.

(1) Agricultural science and technology assignments. An individual must: [The following provisions apply to assignments to agricultural vocational education for the handicapped (VEH), agricultural preemployment laboratory (PELE), and agricultural cooperative training (CO-OP)-]

(A) hold a baccalaureate degree from an accredited institution of higher education; and

(B) have completed 24 semester credit hours in agricultural science and technology coursework.

[(A) An individual must be currently certified in agricultural science:]

[(B) No previous work experience is required:]

[(C) One permit may be authorized to allow the teacher to attend a summer workshop or to complete six semester hours of upper-level specified technical agriculture courses in the area of specialization approved by the SBEC:]

(2) Health science technology assignments. An individual must:

(A) hold a baccalaureate degree from an accredited institution of higher education;

[(A) hold one of the following:]

[(i) a bachelor's degree, preferably in allied health, from an accredited institution; or]

[(ii) an associate's degree in allied health from an accredited institution;]

(B) be currently licensed, certified, or registered (requiring two years of college [format] education) by a state-authorized or nationally recognized accrediting agency as a professional practitioner in one or more health occupations for which instruction is offered; and

(C) have an approved statement of qualifications verifying two years of full-time employment in an accredited health care facility or agency while holding the license mentioned in subparagraph (B) of this paragraph [a licensed hospital or other health services agency beyond that required to become registered or certified].

(3) Family and consumer sciences assignments. An individual must:

(A) hold a baccalaureate degree from an accredited institution of higher education; and

(B) have completed 24 semester credit hours in family and consumer sciences coursework.

[(3) Home economics assignments:]

[(A) Home economics:]

[(i) An individual must hold a bachelor's degree in home economics from an accredited institution:]

[(ii) No previous work experience is required:]

[(B) Occupational home economics: An individual must satisfy one of the following requirements:]

[(i) An individual must:]

[(I) be certified in home economics; and]

[(II) have completed six semester hours of home economics education, emphasizing an all industry approach, designed to build instructional competencies in occupational home economics; or]

[(ii) an individual must:]

[(I) be certified in home economics with eligibility to teach specialized areas through CO-OP, PELE, coordinated vocational-academic education (CVAE), or VEH instructional settings; and]

[(II) have completed three semester hours of home economics education, emphasizing an all industry approach, designed to build instructional competencies in occupational home economics:]

(4) Marketing education assignments. An individual must:

(A) hold a baccalaureate [bachelor's] degree from an accredited institution of higher education; [and]

(B) have completed 24 semester credit hours in marketing coursework; and

(C) [(B)] have an approved statement of qualifications verifying two years of full-time wage-earning experience in marketing occupations for which training is offered at the secondary level.

[(5) Career orientation assignments. An individual must:]

~~{(A) hold a bachelor's degree from an accredited institution; and}~~

~~{(B) have an approved statement of qualifications verifying two years of full-time wage-earning experience in occupations other than teaching for which career and technology education may be taught;}~~

~~(5) [(6)] Business education assignments (for any instructional arrangement). An individual must:~~

~~(A) hold a baccalaureate [bachelor's] degree from an accredited institution of higher education [in business/business education or have completed the equivalent of a minor in the course area to be taught]; and~~

~~(B) have completed 24 semester credit hours in business coursework.~~

~~{(B) have one of the following:}~~

~~{(i) an approved statement of qualifications verifying two years of full-time wage-earning experience in office occupations; or}~~

~~{(ii) verification of approval to complete a business internship approved by the certification officer of a college approved to prepare teachers for office education.}~~

~~(6) [(7)] Trade and industrial education [Trades and industry] assignments.~~

~~(A) Option I [Cooperative training]. An individual must:~~

~~(i) hold a baccalaureate [bachelor's] degree from an accredited institution of higher education; and~~

~~(ii) have an approved statement of qualifications verifying three years of full-time wage-earning experience earned within the past eight years in one or more approved occupations for which instruction is offered. Up to 18 months of the wage-earning experience can be met through a formal documented internship. [The individual must be continuously employed for one of the three years in a single occupation or trade area.}~~

~~(B) Option II. An individual must:~~

~~(i) hold an associate degree from an accredited institution of higher education; and~~

~~(ii) have an approved statement of qualifications verifying three years of full-time wage-earning experience earned within the past eight years in one or more approved occupations for which instruction is offered.~~

~~(C) Option III. An individual must:~~

~~(i) hold a high school diploma or the equivalent; and~~

~~(ii) have an approved statement of qualifications verifying five years of full-time wage-earning experience earned within the past eight years in one or more approved occupations for which instruction is offered.~~

~~(D) Additional requirements.~~

~~(i) Current licensure, certification, or registration by a state or nationally recognized accrediting agency as a professional practitioner in one or more approved occupations for which instruction is offered. Licensure, certification, or registration by a nationally recognized accrediting agency must be based on a recognized test or measurement. If the license, certification, or registration is not based on a recognized test or measurement, then passing of the appropriate~~

National Occupational Competency Testing (NOCTI) assessment is required.

(ii) A cosmetology teacher must:

(I) have three years of full-time wage-earning experience as a licensed cosmetologist; and

(II) currently be licensed as a cosmetology instructor by the Texas Department of Licensing and Regulation.

(iii) Wage-earning experience must be approved by the certification officer of the educator preparation program.

~~{(B) Preemployment laboratory.}~~

~~{(i) Option I. An individual must:}~~

~~{(I) hold a bachelor's degree from an accredited institution; and}~~

~~{(II) have an approved statement of qualifications verifying three years of full-time wage-earning experience in the occupation or skilled trade to be taught, two years of which must be in the predominant subject area.}~~

~~{(ii) Option II. An individual must:}~~

~~{(I) hold a high school diploma or the equivalent; and}~~

~~{(II) have an approved statement of qualifications verifying five years of full-time wage-earning experience in the occupation or skilled trade to be taught, three years of which must be in the predominant subject area.}~~

~~{(iii) Additional requirements. Cosmetology teachers approved under Options I or II must:}~~

~~{(I) have three years of full-time wage-earning experience as a licensed cosmetologist; and}~~

~~{(II) be currently licensed as a cosmetology instructor by the Texas Cosmetology Commission.}~~

~~(f) [(g)] Assignments for special populations.~~

~~(1) English language learners (ELLs) [Students with limited English proficiency (LEP)].~~

~~(A) Bilingual education.~~

~~(i) An individual who holds a baccalaureate [bachelor's] degree from an accredited institution of higher education and is certified at the appropriate level must:~~

~~(I) have completed three [six] semester credit hours in an approved bilingual education program; and~~

~~(II) have completed six semester credit hours in the language of the target population; or have demonstrated proficiency in oral communication skills in the language of the target population by achieving a score of "intermediate mid" (level 2) or higher on the Texas Oral Proficiency Test (TOPT) or a comparable score on a state-approved examination of oral proficiency.~~

~~(ii) An individual who holds a baccalaureate [bachelor's] degree from an accredited institution of higher education, but is not certified must:~~

~~(I) meet the requirements for the level of assignment;~~

~~(II) be currently enrolled in an approved educator preparation [college] program for bilingual education; and~~

(III) have satisfied one of the following requirements:

(-a-) have completed 12 semester credit hours in the language of the target population, bilingual education, or a combination of the two subject areas; or

(-b-) have demonstrated proficiency in oral communication skills in the language of the target population by achieving a score of "intermediate mid" (level 2) or higher on the TOPT or a comparable score on a state-approved examination of oral proficiency.

(B) English as a second language (ESL). An individual must:

(i) be currently certified for the grade level based on a baccalaureate [bachelor's] degree from an accredited institution of higher education; and

(ii) have satisfied one of the following requirements:

(I) have completed six semester credit hours in an approved ESL program; or

(II) have one creditable year of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) [Subchapter Y of this title (relating to Definitions)].

(2) Students with special learning needs.

(A) Auditory impairments [Hearing impaired]. An individual must:

(i) hold a baccalaureate [bachelor's] degree from an accredited institution of higher education;

(ii) have completed six semester credit hours directly related to teaching the hearing impaired;

(iii) have demonstrated competence in the specific communication method used in the classroom setting with students who are deaf; and

(iv) have verified that the employing school district, cooperative, or education service center (ESC) [ESC] has one or more fully certified teachers for students with auditory impairments available as a mentor and to provide support [the hearing impaired serving in this instructional program].

(B) Visual impairments [Visually handicapped]. An individual must:

(i) be currently certified in elementary, secondary, or special education;

(ii) have satisfied one of the following requirements:

(I) have completed six semester credit hours directly related to teaching students with visual impairments [the visually handicapped]; or

(II) have one creditable year of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title [Subchapter Y of this Chapter];

(iii) have demonstrated competency in literary Braille and basic Nemeth Code by passing the approved Braille examination, holding certification as a literary Braille transcriber by the Library of Congress, or completing one university course in Braille [braille and/or other special braille notations]; and

(iv) have verified that the employing school district, cooperative, or ESC has one or more fully certified teachers of students

with visual impairments available as a mentor and to provide support [for the visually handicapped serving in this instructional program].

(C) Home-based instruction or instruction in a hospital class [Homebound or hospitalized]. An individual must:

(i) be currently certified based on a baccalaureate [bachelor's] degree from an accredited institution of higher education; and

(ii) have one creditable year of teaching experience, as defined in Chapter 153, Subchapter CC, of this title [Subchapter Y of this Chapter].

(D) Special education (Early Childhood-Grade 12) [Other special learning needs (resource room/categorically defined)].

(i) An individual who holds a baccalaureate [bachelor's] degree from an accredited institution of higher education and is certified at the appropriate level must:

(I) have completed six semester credit hours directly related to teaching children with special learning needs; or

(II) have one creditable year of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title [Subchapter Y of this Chapter].

(ii) An individual who holds a baccalaureate [bachelor's] degree from an accredited institution of higher education, but is not certified must:

(I) for elementary assignments, meet requirements for the level of assignment as stated in subsection (b) of this section and have completed 18 semester credit hours directly related to teaching children with special learning needs; or

(II) for secondary assignments, have completed 24 semester credit hours directly related to teaching children with special learning needs.

(g) ~~[(h)]~~ Assignments for other instructional and support personnel.

(1) School Counselor (Early Childhood-Grade 12). An individual must: [Counselors.]

(A) hold a baccalaureate degree from an accredited institution of higher education;

(B) have completed 24 semester credit hours of graduate-level credit, including 12 semester credit hours in guidance and counseling; and

(C) have two creditable years of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title.

~~[(A) Regular programs. An individual must:]~~

~~[(i) be currently certified at the level of assignment based on a bachelor's degree;]~~

~~[(ii) have 24 semester hours of graduate-level credit, including 12 semester hours in guidance and counseling; and]~~

~~[(iii) have three creditable years of classroom teaching experience, as defined in Subchapter Y of this Chapter.]~~

~~[(B) Special education programs. An individual must:]~~

~~[(i) be currently certified at the level of assignment based on a bachelor's degree;]~~

~~/(ii) have 24 semester hours of graduate-level credit, including 12 semester hours in guidance and counseling and three semester hours in special education; and}~~

~~/(iii) have three creditable year of classroom teaching experience, as defined in Subchapter Y of this Chapter.}~~

~~/(C) Career and technology programs. An individual must:}~~

~~/(i) be currently certified based on a bachelor's degree;}~~

~~/(ii) have 12 semester hours of graduate-level credit in guidance and counseling; and}~~

~~/(iii) have satisfied one of the following requirements:}~~

~~/(I) have two creditable years of acceptable teaching experience, as defined in Subchapter Y of this Chapter, in an approved career and technology program that prepares students for gainful employment; or}~~

~~/(II) have a combination of three years of experience that may include creditable teaching experience but must include at least one year of experience in an occupation or trade area for which career and technology education is offered. To establish acceptability of work experience other than teaching, a statement of qualifications must be approved by the certification officer of an institution approved to prepare career and technology counselors.}~~

~~(2) Educational Diagnostician (Early Childhood-Grade 12) [diagnosticians]. An individual must:~~

~~(A) hold [be currently certified based on] a baccalaureate [bachelor's] degree from an accredited institution of higher education;~~

~~(B) have completed 30 semester credit hours of graduate-level credit in the field of education or a related field, including six semester credit hours in tests and measurements, at least three semester credit hours of which emphasized individualized testing;~~

~~(C) have completed six semester credit hours directly related to teaching individuals with special learning needs; and~~

~~(D) have two [three] creditable years of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title [Subchapter Y of this Chapter].~~

~~(3) School Librarian (Early Childhood-Grade 12) [Learning resources personnel]. An individual must:~~

~~(A) hold [be currently certified based on] a baccalaureate [bachelor's] degree from an accredited institution of higher education;~~

~~(B) have completed six semester credit hours directly related to the basic competencies required of school librarians [learning resources personnel]; and~~

~~(C) have two [one] creditable years [year] of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title [Subchapter Y of this Chapter].~~

~~(4) Reserve Officers' Training Corps (ROTC) instructor [instructors].~~

~~(A) An individual must verify that he or she has satisfied the requirements and been approved to serve by the ROTC.~~

~~(B) Requirements specified in §230.506 of this title [subchapter] (relating to Renewal Requirements) do not apply to this assignment.~~

~~(C) Continued assignment must be documented on the individual's teacher service record.~~

~~/(5) Supervisors.}~~

~~/(A) Regular programs. An individual must:}~~

~~/(i) be currently certified based on a bachelor's degree;}~~

~~/(ii) have 24 semester hours of graduate-level credit, including six semester hours of educational leadership and supervision; and}~~

~~/(iii) have three creditable years of classroom teaching experience, as defined in Subchapter Y of this Chapter.}~~

~~/(B) Special education programs. An individual must:}~~

~~/(i) be currently certified based on a bachelor's degree;}~~

~~/(ii) have satisfied one of the following requirements:}~~

~~/(I) be currently certified in a special education area and have completed six semester hours in educational leadership or supervision; or}~~

~~/(II) be currently certified in supervision or administration and have completed six semester hours in special education, including a survey of individual exceptionalities;}~~

~~/(iii) have 24 semester hours of graduate-level credit in education or a related field; and}~~

~~/(iv) have three creditable years of classroom teaching experience, as defined in Subchapter Y of this Chapter, including at least one year in a special education setting}~~

~~/(C) Career and technology programs. An individual must:}~~

~~/(i) hold a bachelor's degree and be currently certified, consistent with the supervisory assignment, for the grade level or programs; and}~~

~~/(ii) have satisfied one or a combination of the following requirements:}~~

~~/(I) have three creditable years of teaching experience, as defined in Subchapter Y of this Chapter, in an approved career and technology education program adopted by the State Board of Education under the Texas Education Code (TEC), §28.002(b); or}~~

~~/(II) have three creditable years of public school experience, as defined in Subchapter Y of this Chapter, as a certified career and technology counselor. Permit applicants for career and technology supervisor assignments are not required to submit a statement of qualifications.}~~

~~/(6) Visiting teachers.}~~

~~/(A) Regular programs. An individual must:}~~

~~/(i) be currently certified based on a bachelor's degree;}~~

~~/(ii) have 15 semester hours of graduate-level credit in the social or behavioral sciences, including six semester hours of~~

specific preparation in studies of the emotional and cultural development of individuals; and]

~~[(iii) have satisfied one or a combination of the following requirements:]~~

~~[(I) have three creditable years of teaching experience, as defined in Subchapter Y of this Chapter; or]~~

~~[(II) have three years of experience in a social welfare agency approved by the State Board for Educator Certification.]~~

~~[(B) Special education programs. An individual must:]~~

~~[(i) be currently certified based on a bachelor's degree;]~~

~~[(ii) have 30 semester hours of graduate-level credit in social or behavioral sciences, including specific preparation to serve individuals with special learning needs; and]~~

~~[(iii) have three creditable years of teaching experience, as defined in Subchapter Y of this Chapter.]~~

§230.505. Procedures for Activation of Initial Emergency Permits.

(a) For all assignments (except career and technical education [technology] assignments based on skill and experience). The employing superintendent or his or her designee or authorized representative must verify the individual's eligibility for the emergency permit as described in §230.503 of this title (relating to General Eligibility Requirements for Emergency Permits) and §230.504 of this title (relating to Specific Requirements for Initial Emergency Permits) [of this subchapter] and submit to the Texas Education Agency (TEA) staff the following information [items to the appropriate education service center (ESC)] within 45 instructional days of assignment:

(1) a completed [an] emergency permit application;

(2) one of the following:

(A) a deficiency plan from an approved Texas educator preparation program verifying that the individual meets the grade point average requirement [required] for admission to the educator [teacher] education program and a listing of the preparation, student teaching/internship, and/or assessment activities required to obtain certification in the assignment for which the emergency permit application has been submitted; or

(B) for an individual who holds a baccalaureate [bachelor's] degree from an accredited institution of higher education, is certified, and is placed in an assignment requiring a classroom teaching certificate or endorsement, verification of registration for the next available [either the October or February] administration of the appropriate content specialization portion of the certification examination [Examination for the Certification of Educators in Texas (ExCET)]; and

(3) the appropriate fee (payable by the school district).

(b) For career and technical education [technology] assignments based on skill and experience. The employing superintendent or his or her designee or authorized representative must verify the individual's eligibility for the emergency permit as described in §230.503 and §230.504 of this title and submit to the TEA staff the following information [items to the appropriate ESC] within 45 instructional days of assignment:

(1) a completed [an] emergency permit application;

(2) a copy of the individual's statement of qualifications, approved by the [employing superintendent or designee or] certification officer of an institution of higher education approved to prepare

career and technical education [technology] teachers, verifying appropriate work experience in the occupation or trade area to be taught. For the purpose of approving work experience, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40 hours per week, but at least 20[.] hours per week, shall be calculated at a 50% rate in determining years of full-time [equivalent] experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time [equivalent] experience;

(3) a deficiency plan from an approved Texas educator preparation program for the career and technical education [technology] certificate appropriate for the assignment; and

(4) the appropriate fee (payable by the school district).

§230.506. Renewal Requirements.

(a) General provisions.

(1) The employing superintendent or his or her designee or authorized representative of a public school district may renew an emergency permit for the same assignment in the same school district for which the initial emergency permit was activated.

(2) No individual may continue in the same assignment for more than three years of service on [the basis of] an emergency permit, except as provided in paragraph (4) of this subsection.

(3) The total of semester credit hours or the equivalent contact hours required to obtain certification appropriate for the assignment shall determine the number of emergency permit renewals for which the individual may be eligible. The following schedule shall determine eligibility for emergency permit renewal.

(A) For six semester credit hours or less plus appropriate examination requirements, an individual is not eligible for renewal.

(B) For six semester credit hours or less, appropriate examination requirements, and teaching two years on an emergency permit in lieu of student teaching, an individual is eligible for one renewal, provided the individual completes all coursework during the first year.

(C) For 7-12 semester credit hours plus appropriate examination requirements, an individual is eligible for one renewal.

(D) For more than 12 semester credit hours plus appropriate examination requirements, an individual is eligible for two renewals.

(4) An emergency permit [Permits] used fewer than 85 calendar days may be renewed for one additional year of service, provided renewal requirements have been met each year. Effective with the 1998-1999 [1998-99] school year, emergency permits used fewer than [that] 90 calendar days may be renewed for one additional year of service.

(b) Renewal procedures.

(1) Before an emergency permit for a noncertified individual is renewed for the first time, the superintendent or his or her designee or authorized representative must verify that a noncertified teacher has satisfied the admission requirements of an educator preparation program in the areas of reading, [oral and] written communication, and mathematics.

(2) No emergency permit renewal will be authorized for a teacher who does not satisfy the admission requirements of an educator preparation program specified in paragraph (1) of this subsection.

(3) The superintendent or his or her designee or authorized representative may renew an emergency permit provided the following requirements and procedures are met.

(A) The emergency permit must be renewed for the same assignment in the same school district.

(B) Official transcripts verifying completion of a minimum of six semester credit hours or documentation of completion of equivalent contact hours toward the appropriate target certificate must be placed in the individual's personnel file.

(C) The appropriate renewal section of the original emergency permit application must be completed prior to the beginning date of duties for the current school year.

(4) Requests for emergency permit renewal must be submitted [to the appropriate education service center (ESC)] for authorization when:

(A) an individual has failed to demonstrate progress toward correcting a deficiency by completing the appropriate renewal requirements specified in subsection (a) of this section;

(B) the renewal is for a change of assignment or school district; or

(C) the renewal is for nonconsecutive years.

(5) The following information [materials] must be submitted when requesting authorization for emergency permit renewal from the Texas Education Agency (TEA) staff [appropriate ESC]:

(A) an emergency permit application, indicating the appropriate renewal, completed before the continued assignment;

(B) verification [official transcripts] of all course work or [documentation of] equivalent contact hours completed since authorization of the initial emergency permit; and

(C) the appropriate fee (payable by the school district).

§230.507. Nonrenewable Permits.

(a) The superintendent or his or her designee of a public school district may activate a nonrenewable permit for an individual who has not completed the appropriate examination requirements specified in §230.5 of this title (relating to Educator Assessment).

(b) A nonrenewable permit may be activated for an individual in one or more of the following categories:

(1) an individual who has completed all course and degree requirements of a Texas educator preparation program specified in this chapter except for successful completion of all appropriate examination requirements. Nonrenewable permits activated for individuals in this category expire 12 months from the date of activation;

(2) an individual who holds a Texas teacher certificate with an effective date before February 1, 1986, but has not revalidated the certificate for employment purposes by passing an examination specified in this chapter. The individual must not have been employed in a Texas public school during the 1985-1986 school year or since. A nonrenewable permit activated for an individual in this category expires six months from the date of activation or at the end of the school year, whichever is less; or

(3) an individual who has served on a one-year [temporary] certificate under Subchapter O of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and passed the appropriate content specialization portions of the certification examinations [Examination for the Certification of Educators in Texas (ExCET)] but

did not pass the pedagogy and professional responsibilities [development] portion of the examination while the one-year [temporary] certificate was valid. A nonrenewable permit activated for an individual in this category expires 12 months from the date the individual first attempted the pedagogy and professional responsibilities [development] portion of the certification examinations [ExCET].

(c) A nonrenewable permit may not be activated for an individual in the same assignment area for which another permit had previously been authorized.

(d) The employing superintendent or his or her designee or authorized representative must verify that an individual is eligible for the permit under this section and submit the following information [items to the appropriate ESC] within 60 calendar days of assignment:

(1) an application for a nonrenewable permit completed before the effective date of the assignment; and

(2) the appropriate fee (payable by the school district).

§230.512. Emergency Certificates.

The permits contained in this subchapter fulfill the provision stated in the Texas Education Code, §21.041(b)(2), concerning emergency certificates until rules relating to new classes of emergency certificates are adopted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

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Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 475-1497



19 TAC §§230.509 - 230.511

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.045(a),

which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on information that is disaggregated with respect to sex and ethnicity and that includes results of the certification examinations prescribed under the TEC, §21.048(a), and performance based on the appraisal system for beginning teachers adopted by the SBEC; §21.045(b), which specifies that each educator preparation program shall submit data elements as required by the SBEC for an annual performance report to ensure access and equity; §21.045(c), which requires the SBEC to propose rules establishing performance standards for the Accountability System for Educator Preparation for accrediting educator preparation programs; §21.045(d), which specifies that the executive director of the SBEC shall appoint an oversight team of educators to make recommendations and provide assistance to educator preparation programs that do not meet accreditation standards; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; §21.048(c)(1), which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048.

The proposed repeals implement the TEC, §§21.031(a), 21.041(b)(1), (2), and (4), 21.044, 21.045, and 21.048.

§230.509. *Policy.*

§230.510. *Exchange Teachers.*

§230.511. *Teachers for Bilingual Education Programs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

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State Board for Educator Certification

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For further information, please call: (512) 475-1497

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SUBCHAPTER S. EDUCATIONAL AIDE CERTIFICATE

19 TAC §§230.551 - 230.555, 230.559, 230.560

The amendments are proposed under the Texas Education Code (TEC), §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The proposed amendments implement the TEC, §21.041(a) and (b)(1)-(4).

§230.551. *Policy.*

An individual [Each person] employed in a Texas public school [schools] as an educational aide must be certified according to requirements established by the State Board for Educator Certification.

§230.552. *Procedures in General.*

(a) School district administrators have the authority and responsibility to determine the number of educational aides and level of job performance desired for the operation of the school district [district's program]. The school district administrator is [They are also] responsible for preparing accurate job descriptions for each assignment, classifying each assignment, and filling these assignments with individuals certified according to this subchapter.

(b) An appropriate certificate shall be issued to a qualified individual who is recommended by the employing superintendent or his or her designee and who meets the requirements [requirement] of this subchapter. The school district shall submit the following materials to the SBEC:

(1) a completed application and recommendation for an educational aide certificate; and

(2) the designated fee.

(c) An individual with experience in other states must have that experience verified on a teacher service record when he or she is employed in a Texas school district.

(d) An applicant for an Educational Aide [educational aide] certificate is subject to the provisions in §230.413(b)(1)-(5) of this title [chapter] (relating to General Requirements).

§230.553. *Certification Requirements for Educational Aide I.*

An applicant for an educational aide I certificate shall:

(1) hold [be] a high school diploma [graduate] or the equivalent [hold a general education diploma (GED) certificate]; and

(2) have experience working with students or parents as approved by the employing superintendent. Experience may be work in church related schools, day camps, youth groups, private schools, licensed day-care centers, or similar experience.

§230.554. *Certification Requirements for Educational Aide II.*

An applicant for an educational aide II certificate shall:

(1) hold [be] a high school diploma [graduate] or the equivalent [hold a general education diploma (GED) certificate];

(2) have satisfied one of the following requirements:

(A) have two creditable years of experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) [~~Subchapter Y of this chapter (relating to Definitions)~~], as an educational aide I; ~~or~~

(B) have completed a minimum of 15 semester credit hours of college credit with some emphasis on child growth and development or related subject areas; or

(C) have demonstrated proficiency in a specialized skill area as determined by the ~~[local]~~ school district; and

(3) have experience working with students or parents as approved by the employing superintendent.

§230.555. Certification Requirements for Educational Aide III.

An applicant for an educational aide III certificate shall:

(1) hold [be] a high school diploma [graduate] or the equivalent [hold a general education diploma (GED) certificate];

(2) have satisfied one of the following requirements:

(A) have three creditable years of experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) [~~Subchapter Y of this chapter (relating to Definitions)~~], as either an educational aide I or II; or

(B) have completed 30 semester credit hours of college credit with some emphasis on child growth and development or related subject areas; and

(3) have experience working with students or parents as approved by the employing superintendent.

§230.559. Assignments in Specialized Areas.

An individual [Each person] employed as an educational aide must hold an Educational Aide [educational aide] certificate. An educational aide assigned to a specialized area, such as vocational education, special education, and title programs, shall meet the eligibility requirements assigned to that area; however, no certification beyond an educational aide certificate will be required for assignment in a specialized area.

§230.560. Role Descriptions.

School districts shall use the following guidelines to assign educational aides.

(1) Educational Aide I [An educational aide I]: [is assigned and] performs routine tasks under the direction and supervision of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher with clerical operations; helps the teacher supervise students in routine movement from one recreational activity to another; helps supervise the playground, bus, and lunchroom; helps the teacher prepare and use instructional media; duplicates instructional materials for teachers; performs classroom clerical operations under the supervision of a certified teacher; or performs equivalent activities determined by the local school district.

(2) Educational Aide II [An educational aide II]: [is assigned and] performs tasks under the general supervision of a certified teacher or teaching team; releases the teacher from routine tasks and

participates in selecting, planning, organizing, and evaluating; helps the teacher prepare and use instructional materials; conducts drills and exercises as directed by the teacher; helps administer and score objective measurement instruments; helps the teacher work with individual students and groups; duplicates materials; records grades and attendance; prepares instructional aids, including displays and mockups; assists with play area activities; helps operate and use educational media; assists with testing routines; works with individual students in drills and exercises; conducts group drills and exercises; assists students with programmed or precise units of instruction; or performs equivalent activities determined by the local school district.

(3) Educational Aide III [An educational aide III]: performs and assumes responsibility for tasks under the general guidance of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher implement methodology and use instructional media to yield an educational environment for all students; assists the teacher with instructional activities; works with individuals or groups of students in a variety of educational experiences; relieves the teacher of selected exercises and instructional drills with students; or performs equivalent activities determined by the local school district.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER U. ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

19 TAC §230.601

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code (TEC), §21.041(b)(1), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed repeal implements the TEC, §21.041(b)(1) and (2).

§230.601. Assignment of Public School Personnel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER V. INDUCTION TRAINING FOR BEGINNING TEACHERS

19 TAC §230.610

The amendment is proposed under the Texas Education Code (TEC), §21.044, which authorizes the State Board for Educator Certification to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate.

The proposed amendment implements the TEC, §21.044.

§230.610. *Induction Program for Beginning Teachers.*

(a) General provisions. Beginning teachers who do not have prior teaching experience shall be assigned a trained mentor teacher.

(b) Induction training for beginning teachers. Beginning teachers shall participate in teacher orientation, which may include specialized induction year program activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER Y. DEFINITIONS

19 TAC §230.801

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code (TEC), §21.041(b)(1), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC

to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed repeal implements the TEC, §21.041(b)(1) and (2).

§230.801. *Definitions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 231. ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

19 TAC §231.1

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §231.1(e) is not included in the print version of the Texas Register. The figure is available in the on-line version of the February 27, 2009, issue of the Texas Register.)

The State Board for Educator Certification (SBEC) proposes new §231.1, concerning provisions for assignment of public school personnel. The proposed new section would provide guidance to school districts with regard to the certificates required for specific assignments of public school educators. The proposed new section includes language from 19 TAC §230.601, which is proposed for repeal as part of the review of 19 TAC Chapter 230.

The SBEC is proposing that 19 TAC Chapter 230, Subchapter U, Assignment of Public School Personnel, §230.601, Assignment of Public School Personnel, be moved to a new chapter as a result of the review of rules in 19 TAC Chapter 230. The proposed repeal of 19 TAC §230.601 can be found in the Proposed Rules section of this issue.

Proposed new 19 TAC §231.1 would specify the criteria for assignment of public school personnel and would adopt in rule a figure showing a list of assignments with corresponding certificates for each assignment. The proposed new section includes language currently in 19 TAC §230.601, which is proposed for repeal and reorganized in proposed new 19 TAC §231.1.

The figure that would be adopted in rule in subsection (e) is organized into three parts. Part I includes the requirements for assignment of teachers. Part II includes the requirements for teachers certified before 1966 and assigned to Grades 6-12. Part III includes the requirements for assignment of administrators, other instructional and professional support personnel, special education related services personnel, and paraprofessional personnel.

The proposed new section would have no procedural and reporting implications. Also, the proposed new section would not include any additional locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new section.

Mr. Booker has determined that for the first five-year period the proposed new section is in effect the public benefit anticipated as a result of the proposed new section would be a clearer and more accessible statement of the requirements relating to the assignment of educators in Texas public schools. There is no anticipated economic cost to persons or entities required to comply with the proposed new section.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed new section implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.1. Criteria for Assignment of Public School Personnel.

(a) The assignment requirements in this chapter apply to the holders of certificates issued on the basis of 1955, 1972, 1984, and 1987 Standards for Teacher Education as well as certificates issued on the basis of standards aligned with the Texas Essential Knowledge and Skills (TEKS) curriculum, adopted by the State Board of Education, as specified in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(b) An elementary certificate may be appropriate for teaching high school students if the level of instruction is comparable to that in elementary grades. When such an assignment is made, course outlines must be maintained in the school district files.

(c) Professional personnel employed in federally funded programs and innovative programs must have the qualifications and meet the assignment requirements specified in subsection (e) of this section and in other rules of the State Board for Educator Certification (SBEC).

(d) The assignment requirements in this chapter apply to substitute teachers. If a school district must employ a substitute teacher who is not certified, a list of the substitute teachers shall be retained in the school district files.

(e) A public school employee must have the appropriate credentials for his or her current assignment specified in the figure provided in this subsection and in other rules of the SBEC, unless the appropriate permit has been issued under Chapter 230, Subchapter Q, of this title (relating to Permits).

Figure: 19 TAC §231.1(e)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER B. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.830

The State Board for Educator Certification (SBEC) proposes an amendment to §232.830, concerning certificate renewal and continuing professional education requirements. The proposed amendment would be necessary to update the current rule to reflect the proposed section title change for 19 TAC §249.16.

The Texas Education Code (TEC), §21.041(b)(7) and (8), authorize the SBEC to adopt rules providing for disciplinary proceedings and enforcing the educator's code of ethics.

At the July 2007 SBEC meeting, the SBEC requested that an amendment to 19 TAC §249.16 be pulled from the proposed rule changes to 19 TAC Chapter 249 for filing with the *Texas Register* so that an Attorney General's opinion could be requested regarding the meaning of the TEC, §21.060, added by Senate Bill 9, 80th Texas Legislature, 2007. The question submitted to the Attorney General was whether the proposed amendment to 19 TAC §249.16 would be in conflict with the TEC, §21.060. Subsequently, the Attorney General issued Opinion No. GA-0614 ruling that the list of crimes deemed to be related to the duties and responsibilities of the education profession is nonexclusive in the TEC, §21.060. Therefore, the SBEC has the authority, pursuant to the Texas Occupations Code, §53.025, to list crimes other than those listed in the TEC, §21.060, as being related to the duties and responsibilities of the education profession. As a result, the SBEC proposes the following amendment to 19 TAC §232.830.

A technical edit would be made to §232.830 to update references to the proposed section title change for 19 TAC §249.16. The proposed amendment to 19 TAC §249.16 can be found in the Proposed Rules section of this issue.

The proposed amendment would have no procedural and reporting implications. Also, the proposed amendment would not include any additional locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Booker has determined that for the first five-year period the proposed amendment is in effect the public benefit anticipated as a result of the proposed amendment would be to inform the public of the appropriate statutory reference for 19 TAC §249.16. There is no anticipated economic cost to persons or entities required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the TEC, §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; and §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics.

The proposed amendment implements the TEC, §21.041(b)(7) and (8).

§232.830. Requirements for Certificate Renewal.

- (a) (No change.)
- (b) To be eligible for renewal, an educator must:
 - (1) - (3) (No change.)
 - (4) successfully resolve any criminal history, as defined by §249.16 of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13e and 6252-13d, Revised Civil Statutes]);
 - (5) - (8) (No change.)
- (c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.2, 233.4, 233.6, 233.7, 233.12, 233.14

The State Board for Educator Certification (SBEC) proposes amendments to §§233.2, 233.4, 233.6, 233.7, 233.12, and 233.14, concerning categories of classroom teaching certificates. The proposed amendments would update the rules to establish a deadline of September 1, 2011, for issuing the Generalist: Early Childhood-Grade 4 certificate, the Bilingual Generalist: Early Childhood-Grade 4 certificate, the Bilingual Education Supplemental: Early Childhood-Grade 4 certificate, the Bilingual Education Supplemental: Grades 4-8 certificate, and the English as a Second Language Generalist: Early Childhood-Grade 4 certificate. Language would also be amended to include a Bilingual Education Supplemental certificate and clarify the specific assignment eligibility for the holder of a mathematics and science certificate.

The Texas Education Code (TEC), §21.003(a), states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B. The TEC, §21.031(b), states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of the state.

The SBEC determined that expiration dates for some certificates are needed as a result of the implementation of the new Generalist Early Childhood-Grade 6 certificates. In addition, the SBEC proposes adding all physics and chemistry courses as acceptable assignments for holders of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate due to changes in the certification examination. Specifically, the following changes to rules are proposed.

In 19 TAC §233.2, language would be added to specify an end date of September 1, 2011, for the Generalist: Early Childhood-Grade 4 certificate in subsection (a).

In 19 TAC §233.4(i), language would be amended to allow the holder of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate to teach all physics and chemistry courses. The Texas Education Agency staff have reviewed and determined that the certification examination incorporates sufficient test items in the areas of physics and chemistry to justify the addition of these assignments.

In 19 TAC §233.6, language would be added to specify an end date of September 1, 2011, for the Bilingual Generalist: Early Childhood-Grade 4 certificate in subsection (a), for the Bilingual Education Supplemental: Early Childhood-Grade 4 certificate in subsection (d), and for the Bilingual Education Supplemental: Grades 4-8 certificate in subsection (e). Proposed new subsection (f) would be added to include the new Bilingual Education Supplemental certificate. A holder of the Bilingual Education Supplemental certificate would teach in a bilingual or English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate.

In 19 TAC §233.7, language would be added to specify an end date of September 1, 2011, for the English as a Second Language Generalist: Early Childhood-Grade 4 certificate in subsection (a).

In 19 TAC §233.12 and §233.14, technical changes would be made, such as the phrase "career and technology" would be replaced with "career and technical." Also in §233.14, the cross reference to 19 TAC §230.483 would be updated due to proposed changes in 19 TAC Chapter 230. The proposed amendment to 19 TAC §230.483 can be found in the Proposed Rules section of this issue.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would not include any additional locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Booker has determined that for the first five-year period the proposed amendments are in effect the public benefit anticipated as a result of the proposed amendments would be clarification of the courses that can be taught by the holders of these certificates and additional flexibility in the assignment of personnel. There is no anticipated economic cost to persons or entities required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the TEC, §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate

or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; §21.048(a), which specifies that the board shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board; §21.050(a), which specifies that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; §21.050(b), which states that the board may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate. The board shall provide for a minimum number of semester credit hours of internship to be included in the hours needed for certification. The board may propose rules requiring additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.214, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and §22.0831(f), which states that the board may propose rules to implement this section, including rules establishing deadlines for a person to submit fingerprints and photographs in compliance with this section and sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate.

The proposed amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4) and (6), 21.048(a), 21.050, and 22.0831(f).

§233.2. Generalist.

(a) Generalist: Early Childhood-Grade 4. The Generalist: Early Childhood-Grade 4 certificate may be issued no earlier than September 1, 2002. The provisions of this subsection shall expire on September 1, 2011. The holder of the Generalist: Early Childhood-Grade 4 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-4:

- (1) Art;

- (2) Health;
- (3) Music;
- (4) Physical Education;
- (5) English Language Arts and Reading;
- (6) Mathematics;
- (7) Science;
- (8) Social Studies; and
- (9) Technology Applications.

(b) - (d) (No change.)

§233.4. Mathematics; Science.

(a) - (h) (No change.)

(i) Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8, all physics and chemistry courses, including Integrated Physics and Chemistry, and all of the technology education courses, including Principles of Technology I and II, in Grades 8-12, and Scientific Research and Design in Grades 9-12. All teachers assigned to teach Principles of Technology I and II shall participate in a TEA-approved workshop for beginning principles of technology teachers prior to teaching the course.

(j) (No change.)

§233.6. Bilingual Education.

(a) Bilingual Generalist: Early Childhood-Grade 4. The Bilingual Generalist: Early Childhood-Grade 4 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Generalist: Early Childhood-Grade 4 certificate may teach in a bilingual prekindergarten program, a bilingual kindergarten program, and a bilingual program in Grades 1-4. The holder of the Bilingual Generalist: Early Childhood-Grade 4 certificate may teach the same content areas, in either a bilingual or general education program, as the holder of the Generalist: Early Childhood-Grade 4 certificate may teach under §233.2(a) of this title (relating to Generalist). The holder of the Bilingual Generalist: Early Childhood-Grade 4 certificate may also teach in an English as a second language program in Early Childhood-Grade 4. The provisions of this subsection shall expire on September 1, 2011.

(b) - (c) (No change.)

(d) Bilingual Education Supplemental: Early Childhood-Grade 4. The Bilingual Education Supplemental: Early Childhood-Grade 4 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Education Supplemental: Early Childhood-Grade 4 certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the Bilingual Education Supplemental: Early Childhood-Grade 4 certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate. The provisions of this subsection shall expire on September 1, 2011.

(e) Bilingual Education Supplemental: Grades 4-8. The Bilingual Education Supplemental: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Education Supplemental: Grades 4-8 certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the Bilingual Education Supplemental:

Grades 4-8 certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate. The provisions of this subsection shall expire on September 1, 2011.

(f) Bilingual Education Supplemental. The Bilingual Education Supplemental certificate may be issued no earlier than September 1, 2009. The holder of the Bilingual Education Supplemental certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the Bilingual Education Supplemental certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate.

§233.7. English as a Second Language.

(a) English as a Second Language Generalist: Early Childhood-Grade 4. The English as a Second Language Generalist: Early Childhood-Grade 4 certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Generalist: Early Childhood-Grade 4 certificate may teach in an English as a second language program in prekindergarten-Grade 4. The holder of the English as a Second Language Generalist: Early Childhood-Grade 4 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Early Childhood-Grade 4 certificate may teach under §233.2(a) of this title (relating to Generalist). The provisions of this subsection shall expire on September 1, 2011.

(b) - (d) (No change.)

§233.12. Career and Technical Education (Certificates not requiring experience and preparation in a skill area).

(a) - (d) (No change.)

(e) Teachers assigned to Career Investigation and Career Connections courses must hold teacher certification in any of the Career and Technical [Technology] Education program areas, and shall participate in a TEA-approved two-hour workshop for beginning Career Investigation and Career Connections teachers prior to teaching the course. Teachers must also attend and participate in a TEA-sponsored Career and Technical [Technology] Education Professional Development Conference prior to assignment.

(f) (No change.)

(g) Business Education: Grades 6-12. The Business Education: Grades 6-12 certificate may be issued no earlier than November 8, 2006. The holder of the Business Education: Grades 6-12 certificate may teach all business education courses in Grades 6-12, excluding economics courses. Teachers are encouraged to attend and participate in a TEA-sponsored Career and Technical [Technology] Education Professional Development Conference during the first year of assignment.

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).

(a) All individuals seeking a career and technical [technology] education certificate specified in this section must have prior work experience and preparation in a skill area approved by an educator preparation program approved to prepare teachers for the career and technical [technology] education certificate sought in accordance with the provisions of §230.483(c) ~~[(g)]~~ of this title (relating to Specific Requirements for Standard Career and Technical Education [Technology] Certificates Based on Experience and Preparation).

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) proposes amendments to §§249.3, 249.15, and 249.16, concerning disciplinary proceedings, sanctions, and contested cases. The proposed amendments would update the current rule to reflect current law and delineate crimes other than those listed in the Texas Education Code (TEC), §21.060, as being related to the duties and responsibilities of the education profession. The proposed amendments would also reflect the proposed section title for 19 TAC §249.16.

The Texas Education Code (TEC), §21.041(b)(7) and (8), authorize the SBEC to adopt rules providing for disciplinary proceedings and enforcing the educator's code of ethics.

At the July 2007 SBEC meeting, the SBEC requested that an amendment to 19 TAC §249.16 be pulled from the proposed rule changes to 19 TAC Chapter 249 for filing with the *Texas Register* so that an Attorney General's opinion could be requested regarding the meaning of the TEC, §21.060, added by Senate Bill 9, 80th Texas Legislature, 2007. The question submitted to the Attorney General was whether the proposed amendment to 19 TAC §249.16 would be in conflict with the TEC, §21.060. Subsequently, the Attorney General issued Opinion No. GA-0614 ruling that the list of crimes deemed to be related to the duties and responsibilities of the education profession is nonexclusive in the TEC, §21.060. Therefore, the SBEC has the authority, pursuant to the Texas Occupations Code, §53.025, to list crimes other than those listed in the TEC, §21.060, as being related to the duties and responsibilities of the education profession. As a result, the SBEC proposes the following changes to 19 TAC §§249.3, 249.15, and 249.16.

These changes are similar to the changes originally presented to the SBEC in July 2007, with the exception of an additional revision to §249.16(b)(3) that would include only felony possession of or conspiracy to possess illegal drugs while retaining the inclusion of all convictions for transfer, sale, or distribution of illegal drugs.

In §249.16(b)(7), the standard for alcohol-related crimes and crimes that relate to the teaching professional would be revised to include felony driving while intoxicated (DWI) and felony driving under the influence of drugs or alcohol (DUI), rather than the previous standard which focused on two or more offenses within any 12-month period.

In §249.16, language would be added in proposed new subsection (d) to state that the remedies found in the TEC, §21.060, added by Senate Bill 9, 80th Texas Legislature, 2007, are cumu-

lative with the remedies found in the Texas Occupations Code, Chapter 53. Both provisions apply to criminal acts committed by certificate holders.

In §249.16, grammatical and technical changes would also be made, such as the replacement of the terms "Agency" and "executive director" with the term "TEA staff" and the replacement of the term "Board" with the term "State Board for Educator Certification." Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements. Technical edits would also be made to §249.3 and §249.15 to update references to the proposed section title for 19 TAC §249.16, as well as statutory citations.

The procedural and reporting implications of the proposed amendments would modify the current process for resolving ethical disputes, resulting in a more efficient resolution process. The proposed amendments would not include any additional locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Booker has determined that for the first five-year period the proposed amendments are in effect the public benefit anticipated as a result of the proposed amendments would be implementing a more efficient and less costly process of resolving less serious educator misconduct complaints and redirecting resources to deal with more serious disciplinary complaints against educators. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.3

The amendment is proposed under the TEC, §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; Texas Occupations Code, §53.021(a), which states that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing

examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation; and §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC.

The proposed amendment implements the TEC, §21.041(b)(7) and (8) and §21.060; and Texas Occupations Code, §53.021(a) and §53.025.

§249.3. *Definitions.*

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (18) (No change.)

(19) Good moral character--the virtues of a person as evidenced, at a minimum, by his or her not having committed crimes relating directly to the duties and responsibilities of the education profession as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13e and 6252-13d, Revised Civil Statutes]) or acts involving moral turpitude.

(20) - (24) (No change.)

(25) Moral turpitude--improper conduct including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13e and 6252-13d, Revised Civil Statutes]); or acts constituting abuse or neglect under the Texas Family Code, §261.001.

(26) - (46) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900631

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 475-1497



SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.15, §249.16

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.060, which

allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; Texas Occupations Code, §53.021(a), which states that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation; and §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC.

The proposed amendments implement the TEC, §21.041(b)(7) and (8) and §21.060; and Texas Occupations Code, §53.021(a) and §53.025.

§249.15. *Disciplinary Action by State Board for Educator Certification.*

(a) (No change.)

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

(1) - (6) (No change.)

(7) the person has committed an act described in §249.14(g) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), §249.12(b) of this title (relating to Administrative Denial; Appeal), or §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13e and 6252-13d, Revised Civil Statutes]).

(c) - (f) (No change.)

§249.16. *Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13e and 6252-13d, Revised Civil Statutes].*

(a) Pursuant to the Texas Occupations Code, Chapter 53 [Articles 6252-13e and 6252-13d, Revised Civil Statutes], and the Texas Education Code (TEC), Chapter 22, Subchapter C, [Chapter 22, Education Code,] the State Board for Educator Certification [board] may suspend or revoke an existing valid certificate, deny an applicant a certificate, or bar a person from being assessed or examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the education profession.

(b) Subsection (a) of this section applies to a crime that [indicates a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator. Crimes considered to relate directly to the duties and responsibilities of the education profession include, but are not limited to:

(1) crimes involving [the crime involves] moral turpitude;

(2) crimes involving [the crime involves] any form of sexual or physical abuse or neglect of a student or minor [or student] or other illegal conduct with a student or minor [or student];

(3) crimes involving any [the facts underlying the crime would support a] felony [conviction for] possession or conspiracy to possess, or any misdemeanor or felony [transfer, sale, distribution, or conspiracy to [possess,] transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481[Health and Safety Code];

(4) crimes involving [the crime involves] school property or funds;

(5) crimes involving [the crime involves] any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(6) crimes occurring [the crime occurs] wholly or in part on school property or at a school-sponsored activity; or

(7) felonies involving driving while intoxicated (DWI) or driving under the influence (DUI) of drugs or alcohol.

~~{(7) two or more crimes are committed within any 12-month period that involve public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct.}~~

(c) Pursuant to the Texas Occupations Code, Chapter 53 [Article 6252-13d, Revised Civil Statutes], the Texas Education Agency (TEA) staff [executive director] shall notify the applicant or certificate holder in writing of the TEA staff's [agency's] intent to seek disciplinary action, including denial or revocation, and the reasons for the proposed action. The applicant or certificate holder shall have the opportunity to be heard according to the procedures set forth in this chapter.

(d) The grounds for revoking or suspending a certificate provided by this section and the Texas Occupations Code, Chapter 53, are cumulative of the other grounds and remedies provided by the TEC, §21.060, and this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2

The Texas Medical Board (Board) proposes amendments to Chapter 166, Physician Registration, §166.2, concerning Continuing Medical Education.

The amendments to §166.2, relating to Continuing Medical Education, would allow members of the Board's Expert Physician Panel to obtain 1 hour of Continuing Medical Education in ethics for completion of training as offered by the Board and up to 6 hours of formal Continuing Medical Education for time actually spent in reviewing standard of care cases and providing a report to the Board.

Robert D. Simpson, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to encourage physicians in this state to participate as members of the Board's Expert Physician Panel, thus providing a greater pool of physicians who can review standard of care cases, act as chart monitors, and monitor compliance with Board orders.

Mr. Simpson has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendment is also authorized by §153.001, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories:

(1) At least 24 credits every 24 months are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award; or

(E) approved by the board for medical ethics and/or professional responsibility courses only.

(2) At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular credit of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and

shall be recorded in a manner that can be easily transmitted to the board upon request.

(4) A physician whose practice includes treating patients in an emergency room setting may complete two credits of formal continuing medical education, as required by paragraph (1) of this subsection, relating to forensic evidence. To obtain credit for such courses, a course must include information regarding indicators of sexual assault and interviewing a person who may have been the victim of a sexual assault.

(5) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

(b) - (p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200900638

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 183. ACUPUNCTURE

22 TAC §§183.2, 183.4, 183.10, 183.20

The Texas Medical Board (board) proposes amendments to Chapter 183, Acupuncture, §183.2, Definitions, §183.4, Licensure, §183.10, Patient Records and §183.20, Continuing Acupuncture Education.

The amendments to §183.2, relating to Definitions, recognize acupuncture schools in the United States or Canada that have been approved by an accrediting body recognized by the Texas Higher Education Coordinating Board and delete obsolete references to examinations taken prior to January 1, 2007.

The amendments to §183.4, relating to Licensure, clarify a possible confusion created by the current language of the rule, which incorrectly indicates that an unapproved acupuncture school in the United States or Canada can be recognized for licensure; increase the limit on times allowed for passage of the examination required for licensure from 3 times to 5 times; delete the requirement that the JP examination be passed within three attempts and provides that passage of the JP examination is not required more than once for another or similar license; clarify that an application is expired, rather than inactive, after one year; provide that applicants of acupuncture schools in the United States or Canada are not required to have a personal interview at board offices; update procedures for submitting fingerprints for licensure applications; clarify the requirement to file an application for relicensure when a license has been expired for more than one year; and make grammatical corrections.

The amendments to §183.10, relating to Patient Records, specify vital signs that must be taken in a proper examination

and reduce time for records to be maintained from indefinitely to 5 years, specifying situations in which they must be maintained longer. The public benefit anticipated as a result of enforcing this section will be to clarify what an initial examination by an acupuncturist should include and to assure that records are maintained by acupuncturists for a reasonable period of time.

The amendments to §183.20, relating to Continuing Acupuncture Education, delete a provision stating that credit for an ethics course completed for purposes of maintenance of licensure for another health profession may satisfy the requirement for continuing acupuncture education in ethics; require one hour of continuing acupuncture education in ethics after November 30, 2010; update references to other board rules; and specify that three years of previous experience must be continuous to achieve approved provider status. The public benefit anticipated as a result of enforcing this section will be to assure that Continuing Acupuncture Education ethics credit is only given for education regarding the practice of acupuncture and update and clarify the language of the rule.

Elsewhere in this issue of the *Texas Register*, the board contemporaneously proposes the rule review for Chapter 183

Robert D. Simpson, General Counsel for the board, has determined that for the first five-year period the amendments as proposed are in effect there will be no fiscal implication to state or local government as a result of enforcing the amended sections.

Mr. Simpson has also determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be as stated above. There will be no effect to individuals required to comply with the amendments as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also authorized by §205.101, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§183.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.

(1) (No change.)

(2) Acceptable approved acupuncture school--Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Tex. Occ. Code:

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or another accrediting body recognized by the Texas Higher Education Coordinating Board, provides certification that the curriculum at the time of the applicant's graduation was equivalent to the curriculum upon which accreditation granted, offered a masters degree or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) - (iv) (No change.)

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAOM or another accrediting body recognized by the Texas Higher Education Coordinating Board, offered a masters degree^[5] or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) - (iv) (No change.)

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a Texas acupuncture school or a school defined in subparagraph (B) of this paragraph. An [through an] evaluation by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an evaluation requested by the board may be utilized when making a determination of substantial equivalence.

(3) - (18) (No change.)

(19) Full NCCAOM examination--The National Certification Commission for Acupuncture and Oriental Medicine examination, consisting of the following:

(A) (No change.)

(B) if taken on or after June 1, 2004 ~~[and before January 1, 2007]~~: the NCCAOM Foundation of Oriental Medicine Module, Acupuncture Module, Point Location Module, ~~[and]~~ the Chinese Herbology Module, and the Biomedicine Module.

~~[(C) if taken on or after January 1, 2007, the NCCAOM Foundation of Oriental Medicine Module, Acupuncture Module, Point Locations Module, the Chinese Herbology Module, and the Biomedicine Module.]~~

(20) Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Act, §205.351 ~~[\$95.351]~~.

(21) - (34) (No change.)

§183.4. Licensure.

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

(1) - (3) (No change.)

(4) is a graduate of an acceptable approved acupuncture school ~~[or received and completed training which, in the opinion of the acupuncture board, was substantially equivalent to training provided by such a school];~~

(5) has taken and passed, within ~~five~~ ~~[three]~~ attempts, each component of the full National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination. If an applicant submits to multiple attempts on a component before and on or after June 1, 2004, the number of attempts shall be combined based on the subject matter tested;

(6) (No change.)

(7) for applicants who apply for a license on or after September 1, 2007, passes a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the acupuncture profession in this state. The jurisprudence examination shall be developed and administered as follows:

(A) Questions ~~[Question]~~ for the JP Exam shall be prepared by agency staff with input from the Acupuncture board and the

agency staff shall make arrangements for a facility by which applicants can take the examination.

(B) - (D) (No change.)

(E) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board. [An applicant who is unable to pass the JP exam within three attempts must appear before a committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam]; and

(8) (No change.)

(b) Procedural rules for licensure applicants. The following provisions shall apply to all licensure applicants.

(1) Applicants for licensure:

(A) (No change.)

(B) whose application for licensure which has been filed with the board office and which is in excess of one year old from the date of receipt shall be considered ~~expired~~ ~~[inactive]~~. Any fee previously submitted with that application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee.

(C) - (G) (No change.)

(2) - (4) (No change.)

(c) Licensure documentation.

(1) Original documents/interview. Upon request, any applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. ~~[An applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection.]~~ Original documents may include, but are not limited to, those listed in paragraph (2) of this subsection.

(2) Required documentation. Documentation required of all applicants for licensure shall include the following:

(A) - (H) (No change.)

(I) Fingerprint card. Each applicant must submit his or her fingerprints according to the procedure prescribed by the board ~~[complete a fingerprint card for the Texas Department of Public Safety and return it to the acupuncture board as part of the application].~~

(J) (No change.)

(3) - (4) (No change.)

(d) (No change.)

(e) Distinguished professor temporary license.

(1) Issuance. The acupuncture board may issue a distinguished professor temporary license to an acupuncturist who:

(A) holds a substantially equivalent license, certificate, or authority to practice acupuncture in another state, province, or country; ~~[and]~~

(B) agrees to and limits any acupuncture practice in this state to acupuncture practice for demonstration or teaching purposes for acupuncture students and/or instructors, and in direct affiliation with an acupuncture school that is a candidate for accreditation or has accreditation through the Accreditation Commission for Acupuncture and Ori-

ental Medicine (ACAOM) at which the students are trained and/or the instructors teach; ~~and~~

(C) agrees to and limits practice to demonstrations or instruction under the direct supervision of a licensed Texas acupuncturist who holds an unrestricted license to practice acupuncture in this state; ~~and~~

(D) pays any required fees for issuance or renewal of the distinguished professor temporary license; ~~and~~ [-]

(E) (No change.)

(2) - (3) (No change.)

(f) Relicensure. If an acupuncturist's license has been expired for one year, it is considered to have been canceled, and the acupuncturist may not renew the license. The acupuncturist may submit an application for relicensure and must comply ~~[obtain a new license by complying]~~ with the requirements and procedures for obtaining an original license.

~~[(g) Approved schools. An ACAOM approved acupuncture school may use the word "college" as a means of representation to the public as long as it maintains ACAOM accreditation. An approved school may not represent itself as a university.]~~

§183.10. Patient Records.

(a) Acupuncturists licensed under the Act shall keep and maintain adequate records of all patient visits or consultations which shall, at a minimum, be written in English and include:

(1) (No change.)

(2) vital signs to include body temperature, pulse or heart rate, respiratory rate, and blood pressure upon initial presentation of the patient, and those vital signs as deemed appropriate by the practitioner for follow-up treatment;

(3) - (11) (No change.)

(b) (No change.)

(c) Maintenance of Medical and Billing Records ~~[Acupuncturists licensed under the Act shall keep copies of patient treatment records indefinitely and billing records for a period of five years from the time of the last treatment rendered to the patient by the acupuncturist].~~

(1) A licensed acupuncturist shall maintain adequate medical and billing records of a patient for a minimum of five years from the anniversary date of the date of last treatment by the acupuncturist.

(2) If a patient was younger than 18 years of age when last treated by the acupuncturist, the medical and billing records of the patient shall be maintained by the acupuncturist until the patient reaches age 21 or for five years from the date of last treatment, whichever is longer.

(3) Acupuncturists shall retain medical and billing records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) An acupuncturist may destroy medical and billing records that relate to any civil, criminal or administrative proceeding only if the physician knows the proceeding has been finally resolved and the records have been maintained at least as long as required by paragraphs (1) - (3) of this subsection.

(d) - (g) (No change.)

§183.20. Continuing Acupuncture Education.

(a) (No change.)

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of continuing acupuncture education (CAE) each year.

(1) - (2) (No change.)

(3) At least one of the required hours shall be from a course in ethics. ~~[An ethics course completed for purposes of maintenance of licensure for another health profession shall satisfy this requirement.]~~

(4) (No change.)

(5) Effective for licensees applying for renewal of their licenses on or after November 30, 2010, at least one hour of biomedicine.

(6) ~~[(5)]~~ No more than two of the required hours may be from courses that primarily relate to practice enhancement or business or office administration.

(7) ~~[(6)]~~ Courses may be taught through live lecture, distance learning, or the Internet.

(c) - (h) (No change.)

(i) Fee for Issuance of Temporary License. The fee for issuance of a temporary license pursuant to the provisions of this section shall be in the amount specified under §175.1 of this title (relating to Application Fees ~~[Fees, Penalties, and Applications]~~); however, the fee need not be paid prior to the issuance of the temporary license, but shall be paid prior to the renewal of a permanent license.

(j) - (k) (No change.)

(l) Monetary Penalty. Failure to obtain and timely report the continuing acupuncture education hours for renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 and §175.3 of this title ~~[of board rules]~~ (relating to Registration and Renewal Fees and Penalties ~~[Fees, Penalties, and Applications]~~).

(m) - (q) (No change.)

(r) Criteria for Provider Approval.

(1) (No change.)

(2) To become an approved provider, a provider shall submit to the board evidence that the provider has three continuous years of previous experience providing CAE courses in Texas that were approved by the board. In addition the provider must have no history of complaints or reprimands with the board.

(3) (No change.)

(4) Acupuncture schools and colleges which have been approved by the board, as defined under §183.2(2) of this title (relating to Definitions), who seek to be approved providers shall be required to submit an application for an approved provider number to the board.

(s) Requirements of Approved Providers.

(1) - (3) (No change.)

(4) An approved provider shall keep the following records for a period of four years in one identified location:

(A) - (C) (No change.)

(D) The attendance record for each course, ~~[which show]~~

(E) (No change.)

(5) - (9) (No change.)

(t) - (v) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

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Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 305-7016



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.1

The Texas State Board of Examiners of Psychologists proposes amendments to §469.1, Timeliness of Complaints. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§469.1. Timeliness of Complaints.

(a) A complaint is timely filed if it is received by the Board, in proper form, within five years of the date of the termination of professional services.

(b) A complaint alleging sexual misconduct by a licensee is timely filed if received within ten years of the termination of services or the patient's reaching the age of majority.

(c) A statute of limitations applying to a complaint filed against a licensee by a health licensing board in another jurisdiction, or filed by another health licensing board in Texas, begins after that jurisdiction's or authority's investigation is complete.

(d) A complaint based on discipline in another jurisdiction is timely filed within five years of the date that the board receives notice of the disciplinary action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900562

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 305-7706



22 TAC §469.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Examiners of Psychologists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §469.11, Legal Actions Reported. The repeal will be replaced with an extended, clarified rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email Brenda.skiff@tsbep.state.tx.us.

The repeal is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§469.11. Legal Actions Reported.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900563

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 29, 2009
For further information, please call: (512) 305-7706

22 TAC §469.11

The Texas State Board of Examiners of Psychologists proposes new rule §469.11, Legal Actions Reported and Reciprocal Discipline. The new rule is being proposed to clarify the former rule and to add a new provision regarding disciplinary actions.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the new rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email Brenda.skiff@tsbep.state.tx.us.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§469.11. Legal Actions Reported and Reciprocal Discipline.

(a) Licensees are required to report legal actions as follows:

(1) Any criminal action taken against a licensee including, but not limited to, arrest, indictment, or conviction, must be reported in writing to the Board within thirty days of the activity.

(2) Any civil lawsuit pertaining to the practice of psychology or involving a licensee's patient or former patient must be reported as follows:

(A) A licensee who initiates a lawsuit must send a copy of the initial pleadings to the Board within thirty days of the filing of such action with the court.

(B) A licensee who is a defendant in a lawsuit must send a copy of the initial pleadings to the Board within thirty days of service upon the licensee.

(3) A complaint shall be opened if a reported criminal action constitutes grounds for disciplinary action as set forth in the Act at 501.401. A complaint may be opened if a reported civil action constitutes grounds for disciplinary action under Board rules.

(4) Any administrative action (complaint) initiated against a licensee by another health licensing board in this state or any other jurisdiction must be reported to the Board by sending a copy of the correspondence and complaint within thirty days of its receipt by the licensee.

(5) Any disciplinary action taken against the licensee by another health licensing board in this state or any other jurisdiction must be reported to the Board by sending a copy of the order or letter of discipline within thirty days of its receipt by the licensee.

(b) Reciprocal Discipline:

(1) A complaint shall be opened upon receipt of a report of discipline against a licensee by another health licensing board in this state or any other jurisdiction.

(2) The disciplinary action imposed on a licensee who is disciplined by another health licensing board will be the discipline applicable to the same conduct or rule violation under Board rules.

(3) A voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health licensing board constitutes disciplinary action under this rule. A complaint shall be opened and the disciplinary action imposed will be the discipline applicable under Board rules to the alleged conduct as if proved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900564

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 305-7706

PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

The Texas State Board of Examiners of Dietitians (board) proposes the repeal of §§711.1 - 711.22 and new §§711.1 - 711.22, concerning the licensing and regulation of dietitians.

BACKGROUND AND PURPOSE

Texas Government Code, §2001.039 requires that each state agency review and consider for re adoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 711.1 - 711.22 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensure and regulation of dietitians still needed; however, the rules will be repealed and proposed as new rules as described in this preamble. The proposed repeals and new sections are the result of the comprehensive rule review undertaken by the board and the board's staff.

SECTION-BY-SECTION SUMMARY

In addition to the changes specifically outlined, the existing rules have been revised and reorganized as new rules to ensure appropriate section, subsection, and paragraph organization and captioning; to ensure clarity; to improve spelling, grammar, and punctuation; to improve agency-wide consistency between programs, as appropriate; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy

of legal citations; to delete repetitive, obsolete, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable, to the extent possible.

The following changes are proposed relating to the repeal and readoption of §711.1 (Definitions). The definition of "formal hearing" was deleted as not necessary.

The following changes are proposed relating to the repeal and readoption of §711.2 (The Board's Operation) and §711.3 (Fees). Section 711.2 was reorganized for ease of use and the subsection that formerly related to licensing fees was moved to a separate section, the new §711.3 (Fees).

The following changes are proposed relating to the repeal of §711.3 (The Profession of Dietetics). The section was moved to new §711.4 and renamed as the Profession of Dietetics and Code of Ethics. New provisions were added at §711.4(c)(1)(P) that require a license holder to report child abuse or neglect and abuse or neglect of the elderly or disabled, in accordance with existing laws.

The following changes are proposed relating to the repeal of §711.8 and renumbered as new §711.9 (Determination of Eligibility for Licensure). The provision requiring that the board ratify applications approved by staff was deleted as obsolete and unnecessary.

The following changes are proposed relating to the repeal of §711.17 and renumbered as new §711.16 (Continuing Education Requirements). The board proposes requiring the Texas jurisprudence examination as an ongoing condition of license renewal and allows license holders one hour of continuing education credit for its completion. The rules formerly provided that the jurisprudence exam would be required only for licenses renewed between January 1, 2007, and December 31, 2008. Additionally, the board proposes to delete the provision allowing a license holder who is not in active practice and is more than 60 years of age to be exempt from continuing education requirements. The board believes that the public interest is best served by requiring licensed dietitians to maintain their licenses in active status and regularly complete continuing education and the Texas jurisprudence examination.

The following changes are proposed relating to the repeal of §711.16 (Inactive Status). The board proposes to delete provisions relating to inactive status as unnecessary. The statute does not require that inactive status be an option for licensees and few licensees avail themselves of the option. The board believes that the public interest is best served by requiring licensed dietitians to maintain their licenses in active status and regularly complete continuing education and the Texas jurisprudence examination.

FISCAL NOTE

Bobbe Alexander, Executive Secretary, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This determination was made because the repeals and new rules do not impose any new requirements that impose a cost on small businesses, as defined by Texas Government Code §2006.001. Small busi-

nesses and micro-businesses will not be required to alter their business practices in order to comply with the rules. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to protect and promote public health, safety, and welfare, through the effective regulation of licensed dietitians.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Secretary, Texas State Board of Examiners of Dietitians, Department of State Health Services, MC 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6601, or by email to dietitian@dshs.state.tx.us. When submitting comments by e-mail, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

22 TAC §§711.1 - 711.22

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Examiners of Dietitians or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Occupations Code, §701.151(2), which requires the board to adopt a code of ethics; by Texas Occupations Code, §701.152, which authorizes the board to adopt rules consistent with the chapter; by Texas Occupations Code, §701.1535(a), which requires the board to adopt rules on consequences of criminal conviction; and by Texas Occupations Code, §701.154(a), which requires the board to set fees by rule. Review of the rules implements Texas Government Code, §2001.039.

The proposed repeals affect the Texas Occupations Code, Chapter 701.

- §711.1. *Definitions.*
- §711.2. *The Board's Operation.*
- §711.3. *The Profession of Dietetics.*
- §711.4. *Academic Requirements for Licensure.*
- §711.5. *Preplanned Professional Experience Requirements for Examination.*
- §711.6. *Examinations for Dietitian Licensure.*
- §711.7. *Application Procedures for All Licensees.*
- §711.8. *Determination of Eligibility for Licensure.*
- §711.9. *Provisional Licensed Dietitians.*
- §711.10. *Licensing.*
- §711.11. *Changes of Name or Address.*
- §711.12. *License Renewal.*
- §711.13. *Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Dietitians.*
- §711.14. *Violations, Complaints, and Subsequent Board Actions.*
- §711.15. *Formal Hearings.*
- §711.16. *Inactive Status.*
- §711.17. *Continuing Education Requirements.*
- §711.18. *Temporary License.*
- §711.19. *Informal Disposition.*
- §711.20. *Default Orders.*
- §711.21. *Suspension of License Under the Family Code.*
- §711.22. *Qualifications of Licensed Dietitians to Provide Diabetes Self-Management Training.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900636

Janet Hall

Chair

Texas State Board of Examiners of Dietitians

Earliest possible date of adoption: March 29, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER A. LICENSED DIETITIANS

22 TAC §§711.1 - 711.22

The proposed new rules are authorized by Texas Occupations Code, §701.151(2), which requires the board to adopt a code of ethics; by Texas Occupations Code, §701.152, which authorizes the board to adopt rules consistent with the chapter; by Texas Occupations Code, §701.1535(a), which requires the board to adopt rules on consequences of criminal conviction; and by Texas Occupations Code, §701.154(a), which requires the board to set fees by rule. Review of the rules implements Texas Government Code, §2001.039.

The proposed new rules affect the Texas Occupations Code, Chapter 701.

§711.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Accredited facilities--Facilities accredited by the Joint Commission on Accreditation of Health Care Organizations.
- (2) Act--The Licensed Dietitian Act, Texas Occupations Code, Chapter 701.
- (3) ALJ--Administrative Law Judge.
- (4) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.
- (5) Association--The American Dietetic Association, which is the national professional association of dietitians.
- (6) Board--The Texas State Board of Examiners of Dietitians.
- (7) Certified facilities, agencies, or organizations--Facilities, agencies, or organizations certified by federal agencies.
- (8) Commission--The Commission on Dietetic Registration of the American Dietetic Association, which is the agency that evaluates credentials, administers proficiency examinations, and issues certificates of registration to qualifying dietitians, and is a member of the National Commission on Health Certifying Agencies. The Commission also approves continuing education activities.
- (9) Contested case--A proceeding in accordance with the APA and this chapter, including, but not restricted to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an administrative hearing.
- (10) CPE--Continuing Professional Experience.
- (11) Department--Department of State Health Services
- (12) Dietitian--A person licensed under the Act.
- (13) Dietetics--The professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle to achieve and maintain the health of people. The term includes, without limitation, the development, management, and provision of nutrition services.
- (14) Executive Secretary--Administrator of licensing activities for the board.
- (15) Licensed dietitian (L.D.)--A person licensed under the Act.
- (16) Licensed facilities, agencies, or organizations--Facilities, agencies, or organizations licensed by state agencies.
- (17) Licensee--A person who holds a current license as a dietitian or provisional licensed dietitian issued under the Act.

(18) Nutrition services--Assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice; establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints; providing nutrition counseling in health and disease; developing, implementing, and managing nutrition care systems; or evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(19) Nutrition assessment--The evaluation of the nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake including enteral and parenteral nutrition. An important component of medical nutrition therapy.

(20) Nutrition counseling--Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status. An important component of medical nutrition therapy.

(21) Pleading--Any written allegation filed by a party concerning its claim or position.

(22) Provisional licensed dietitian (PLD)--A person provisionally licensed under the Act.

(23) Registered dietitian (RD)--A person who is currently registered as a dietitian by the commission.

(24) SOAH--The State Office of Administrative Hearings.
§711.2. The Board's Operation.

(a) Officers.

(1) Chair.

(A) The chair shall preside at all board meetings at which he or she is in attendance and perform all duties prescribed by law or board rules.

(B) The chair is authorized by the board to make day-to-day minor decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(C) The chair shall serve as an ex officio member of all committees except the complaints committee.

(2) Vice-chair.

(A) The vice-chair shall perform the duties of the chair in case of the absence or disability of the chair.

(B) In case the office of chair becomes vacant, the vice-chair shall serve until a successor is appointed.

(b) Elections and Training Program.

(1) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(2) The board shall meet to elect an assistant presiding officer in accordance with the Act.

(3) A board member shall not serve more than two consecutive terms in the office of vice-chair.

(4) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with the Act.

(c) Meetings.

(1) The board shall hold at least two regular meetings and additional meetings as necessary during each year beginning on September 1, at such designated date, place, and time as may be determined by the chair.

(2) Special meetings may be called by the chair at such times, dates, and places as become necessary for the transaction of board business.

(3) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(d) Quorum. A quorum of the board necessary to conduct official business is five members.

(e) Transaction of official business.

(1) The board may transact official business only when in a legally constituted meeting with a quorum present.

(2) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is in pursuance of specific instructions of the board.

(3) Board action shall require a majority vote of those members present and voting.

(f) Policy against discrimination. The board shall make decisions in the discharge of its statutory authority without discrimination based on any person's race, creed, gender, genetic information, religion, national origin, geographical distribution, age, physical condition, or economic status.

(g) Impartiality. Any board member who is unable to be impartial in any proceeding before the board, such as that pertaining to an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare this to the board and shall not participate in any board proceedings involving that individual.

(h) Attendance.

(1) The policy of the board is that members shall attend regular and committee meetings as scheduled.

(2) The board may report to the governor the attendance records of members.

(3) Except in case of emergency, board members shall notify the executive secretary at least 48 hours prior to the scheduled meeting if he or she will be absent.

(4) Except in case of emergency, the executive secretary shall notify the chair at least 48 hours prior to the scheduled meeting if he or she will be absent.

(i) Reimbursement for expense.

(1) A board member is entitled to reimbursement for travel expenses as provided by the latest General Appropriations Act passed by the Texas Legislature.

(2) Payment to board members of travel expenses shall be requested on official state travel vouchers.

(3) Board travel must conform to existing policies of the department.

(4) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(j) Rules of order. The latest edition of Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by these board rules.

(k) Agendas.

(1) The executive secretary shall prepare and submit to each member of the board, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of board business, which have been approved for discussion by the chair.

(2) The official agenda of a meeting shall be filed with the Texas secretary of state in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(l) Minutes.

(1) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments prior to approval by the board.

(2) After approval by the board, the minutes of any board meeting are official only when affixed with the original signatures of the chair and the executive secretary.

(3) The official minutes of board meetings shall be posted on the board's website.

(m) Official records.

(1) All official records of the board, except files containing information considered confidential under the provisions of the Texas Public Information Act, Texas Government Code, Chapter 552, shall be open for inspection upon written request.

(2) A person may obtain photocopies of records upon written request and by paying the cost set by the department. Payment shall be made prior to release of the records.

(n) Committees.

(1) The board or the chair with the approval of the board may establish committees deemed necessary to assist the board in carrying out its duties and responsibilities.

(2) The chair may appoint the members of the board to serve on committees and may designate the committee chair.

(3) The chair of the board may appoint non-board members to serve as consultants to a committee on a voluntary basis, subject to board approval.

(4) Committee chairs shall make regular reports to the board in interim written reports and/or at regular meetings, as needed.

(5) Committees shall direct all reports or other materials to the executive secretary for distribution.

(6) Committees shall meet when called by the chair of the committee or when so directed by the board.

(7) The following standing committees shall be appointed by the chair each odd-numbered year to serve a term of two years.

(A) The rules committee shall be composed of two board members who are licensed dietitians and one public member of the board. The committee shall review all board rules periodically to ensure that the rules are current in relation to dietetic practice, and may recommend and propose new or amended rules to the board. The committee shall consider all petitions for adoption of rules and shall recommend disposition of these petitions to the board in accordance with subsection (p) of this section.

(B) The program approval committee shall be composed of three board members who are licensed dietitians. The committee shall review all applications for internship and preplanned professional experience programs received by the board and shall either approve or deny the applications. Determinations made by the committee are subject to ratification at the next regular meeting of the board.

(C) The consumer information committee shall be composed of two board members who are licensed dietitians and one public member of the board. The committee shall recommend to the executive secretary the publication of consumer information related to the board and shall guide the preparation of all consumer information related publications. The committee shall recommend to the board action to be taken regarding proposed publications.

(D) The complaints committee shall review complaints received by the board and shall recommend action to be taken on complaints in accordance with §711.18 of this title (relating to Violations, Complaints and Subsequent Board Actions). The chair shall appoint at least one public member of the board to the complaints committee.

(o) Registry.

(1) The department shall publish a registry of current license holders.

(2) The registry shall include, but not be limited to, the name, preferred mailing address, and telephone number of current licensees.

(3) The registry will be available on the board's Internet web site.

(p) Petition for adoption of a rule.

(1) Submission of the petition.

(A) Any person may petition the board to adopt a rule.

(B) The petition shall be in writing, shall contain the petitioner's name and address, and shall describe the rule and the reason for it; however, if the executive secretary determines that further information is necessary to assist the board in reaching a decision, the executive secretary may require that the petitioner resubmit the petition and that it contain:

(i) a brief explanation of the proposed rule;

(ii) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(iii) a statement of the statutory or other authority under which the rule is to be promulgated; and

(iv) the public benefits anticipated as a result of adopting the rule or the anticipated injury or inequity which would result from the failure to adopt the proposed rule.

(C) The board may deny a petition which does not contain the information in subparagraph (B) of this paragraph or the information in subparagraph (B)(i) - (iv) of this paragraph if the executive secretary determines that the latter is necessary.

(D) The petition shall be mailed or delivered to the executive secretary.

(2) Consideration and disposition of the petition.

(A) The executive secretary shall submit a completed petition to the board for its consideration.

(B) Within 60 days after receipt of the petition by the executive secretary, or within 60 days after receipt of a resubmitted petition in accordance with paragraph (1)(B)(i) - (iv) of this subsection, the board shall either:

(i) deny the petition;

(ii) initiate rule-making procedures; or

(iii) deny the petition, but refer the petition to the rules committee for its recommendation. The committee shall report its recommendations to the board at its next regular meeting.

(C) The board may deny parts of the petition and/or institute rule making procedures on parts of the petition.

(D) If the board denies the petition, the executive secretary shall give the petitioner written notice of the board's denial, including the reason(s) for the denial.

(E) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(3) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of paragraphs (1) and (2) of this subsection. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

§711.3. Fees.

(a) Schedule of fees for licensure as a dietitian:

(1) application (includes two year initial license) fee--\$108;

(2) license fee for upgrade of provisional licensed dietitian--\$20;

(3) renewal fee: an initial regular license or a renewal regular license--\$90; and

(4) late renewal fee:

(A) \$112.50 when renewed on or within 90 days of expiration; or

(B) \$135.00 when renewed later than 90 days but less than one year;

(b) Application for licensure as a temporary licensed dietitian, including initial license fee--\$54.

(c) Schedule of fees for licensure as a provisional licensed dietitian:

(1) application (includes initial license) fee--\$54;

(2) renewal fee for license issued for a one-year term--\$45;
and

(3) late renewal fee:

(A) \$56.25 when renewed on or within 90 days of expiration; or

(B) \$67.50 when renewed later than 90 days but less than one year.

(d) Additional fees for licensure as a dietitian, temporary licensed dietitian, and a provisional licensed dietitian:

(1) license certificate and identification card replacement fee--\$20;

(2) application processing fee for preplanned professional experience approval--\$300;

(3) license reinstatement fee following suspension under the Family Code--\$80;

(4) written verification of licensure fee--\$25; and

(5) returned check fee--\$25.

(e) For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(f) For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(g) An applicant whose check for the application fee is returned marked insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the board a money order or check for guaranteed funds in the amount of the application fee plus the returned check fee within 30 days of the date of receipt of the board's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(h) An approved applicant whose check for the license fee is returned marked insufficient funds, account closed or payment stopped shall remit to the board a money order or check for guaranteed funds in the amount of the license fee plus the returned check fee within 30 days of the date of receipt of the board's notice. Otherwise, the application and the approval shall be invalid.

(i) A licensee whose check for the renewal fee is returned marked insufficient funds, account closed or payment stopped shall remit to the board a money order or check for guaranteed funds in the amount of the renewal fee plus the returned check fee within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be invalid.

(j) Fees paid to the board by applicants and licensees are not refundable.

(k) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through rule amendments.

§711.4. The Profession of Dietetics and Code of Ethics.

(a) The profession of dietetics includes six primary areas of expertise: clinical, educational, management, consultation, community and research; and includes without limitation the development, management, and provision of nutrition services, as follows:

(1) planning, developing, controlling, and evaluating food service systems;

(2) coordinating and integrating clinical and administrative aspects of dietetics to provide quality nutrition care;

(3) establishing and maintaining standards of food production, service, sanitation, safety, and security;

(4) planning, conducting, and evaluating educational programs relating to nutrition care;

(5) developing menu patterns and evaluating them for nutritional adequacy;

(6) planning layout designs and determining equipment requirements for food service facilities;

(7) developing specifications for the procurement of food and food service equipment and supplies;

(8) developing and implementing plans of nutrition care for individuals based on assessment of nutrition needs;

(9) counseling individuals, families, and groups in nutrition principles, dietary plans, and food selection and economics;

(10) communicating appropriate diet history and nutrition intervention data through medical record systems;

(11) participating with physicians and allied health personnel as the provider of nutrition care;

(12) planning, conducting or participating in, and interpreting, evaluating, and utilizing pertinent current research related to nutrition care;

(13) providing consultation and nutrition care to community groups and identifying and evaluating needs to establish priorities for community nutrition programs;

(14) publishing and evaluating technical and lay food and nutrition publications for all age, socioeconomic, and ethnic groups; and

(15) planning, conducting, and evaluating dietary studies and participating in nutrition and epidemiologic studies with a nutrition component.

(b) Provider of nutrition services. A person licensed by the board is designated as a health care provider of nutrition services.

(1) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may accept, transcribe into a patient's medical record or transmit verbal or electronically-transmitted orders, including medication orders, from a physician to other authorized health care professionals relating to the implementation or provision of medical nutrition therapy and related medical protocols for an individual patient or group of patients. In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter. In a private practice setting, the medical direction or authorization shall be provided, as appropriate, through the physician's order, standing medical order, or standing delegation order of a referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter.

(2) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols for individual patients or groups of patients. In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol, issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter. In a private practice setting, the medical direction or authorization shall be provided through the physician's order, standing medical order, or a standing delegation order of the referring physician,

in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter.

(c) Code of ethics. These rules shall constitute a code of ethics as authorized by the Act, §701.151.

(1) Professional representation and responsibilities.

(A) A licensee shall conduct himself/herself with honesty, integrity and fairness.

(B) A licensee shall not misrepresent any professional qualifications or credentials. A licensee shall not make any false or misleading claims about the efficacy of any nutrition services or dietary supplements.

(C) A licensee shall not permit the use of his/her name for the purpose of certifying that nutrition services have been rendered unless that licensee has provided or supervised the provision of those services.

(D) A licensee shall not promote or endorse products in a manner that is false or misleading.

(E) A licensee shall disclose to a client, a person supervised by the licensee, or an associate any personal gain or profit from any item, procedure, or service used by the licensee with the client, supervisee, or associate.

(F) A licensee shall maintain knowledge and skills required for professional competence. A licensee shall provide nutrition services based on scientific principles and current information. A licensee shall present substantiated information and interpret controversial information without bias.

(G) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of nutrition services.

(H) A licensee shall comply with the provisions of the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481 and Chapter 483 relating to dangerous drugs; and any rules of the department or the Texas State Board of Pharmacy implementing those chapters.

(I) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of board rules to the board's executive secretary.

(J) A licensee shall comply with any order relating to the licensee which is issued by the board.

(K) A licensee shall not aid or abet the practice or misrepresentation of an unlicensed person when that person is required to have a license under the Act.

(L) A licensed dietitian shall supervise a provisional licensed dietitian in accordance with §711.10 of this title (relating to Provisional Licensed Dietitians).

(M) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or presentation relating to the services of the licensee, any person supervised by the licensee or any dietary supplement.

(N) A licensee shall conform to generally accepted principles and standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the association or commission, and other professional or governmental bodies. A licensee shall recognize and exercise professional judgment within

the limits of his/her qualifications and collaborate with others, seek counsel, or make referrals as appropriate.

(O) A licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(P) A licensee shall report information if required by the following statutes:

(i) Texas Family Code, Chapter 261, concerning abuse or neglect of minors; or

(ii) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons.

(2) Professional relationships.

(A) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship. A licensee shall bill a client or a third party in the manner agreed to by the licensee and in accordance with state and federal law.

(B) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(C) A licensee shall disclose to clients any interest in commercial enterprises which the licensee promotes for the purpose of personal gain or profit.

(D) A licensee shall take reasonable action to inform a client's physician and any appropriate allied health care provider in cases where a client's nutritional status indicates a change in medical status.

(E) A licensee shall provide nutrition services without discrimination based on race, creed, gender, religion, national origin, or age.

(F) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records. A licensee shall protect confidential information and make full disclosure about any limitations on his/her ability to guarantee full confidentiality.

(G) A licensee shall not engage in sexual contact with a client. The term "sexual contact" means any type of sexual behavior described in the Texas Penal Code, Chapters 21, 22, or 43, and includes sexual intercourse. A licensee shall not engage in sexual harassment in connection with professional practice.

(H) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services provided.

(I) A licensee shall not provide services to a client or the public if by reason of any mental or physical condition of the licensee, the services cannot be provided with reasonable skill or safety to the client or the public.

(J) A licensee shall not provide any services which result in mental or physical injury to a client or which create an unreasonable risk that the client may be mentally or physically harmed.

(K) A licensee shall provide sufficient information to enable clients and others to make their own informed decision regarding nutritional services.

(L) A licensee shall be alert to situations that might cause a conflict of interest or have the appearance of a conflict. A licensee shall make full disclosure when a real or potential conflict of interest arises.

(3) Supervision of provisional licensed dietitian. A licensed dietitian shall supervise a provisional licensed dietitian or a temporary licensed dietitian for whom the licensee has assumed supervisory responsibility.

(4) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for client nutrition services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(5) A licensee may not persistently or flagrantly overcharge or overtreat a client.

(6) Sanctions. A licensee shall be subject to disciplinary action by the board if under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Article 56.31, the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has been convicted and ordered to pay court costs under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Chapter 56, Subchapter B, Article 56.55.

(d) Disclosure.

(1) A licensee shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification:

(A) on each written contract for services of a licensee;

(B) on a sign prominently displayed in the primary place of business of each licensee; or

(C) in a bill for service provided by a licensee to a client or third party.

(2) A provisional licensed dietitian must include the name and telephone number of his or her supervisor in all advertising and announcements of services including business cards and applications for employment.

(e) Unlawful, false, misleading, or deceptive advertising.

(1) A licensee shall use factual information to inform the public and colleagues of his/her services. A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(2) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(D) contains a testimonial;

(E) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(F) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(I) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(3) A "health care professional" includes a licensed dietitian, provisional licensed dietitian, temporary licensed dietitian, or any other person licensed, certified, or registered by the state in a health-related profession.

(f) Applicants. A violation of any provision of subsection (c) of this section by a person who is an applicant or who subsequently applies for a license (even though the person was not a licensee at the time of the violation) may be a basis for disapproval of the application under §711.9(d)(7) of this title (relating to Determination of Eligibility for Licensure).

§711.5. Academic Requirements for Licensure.

(a) General.

(1) The board shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees and course work received from American colleges or universities which held accreditation, at the time the degree was conferred or the course work was taken, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(2) Degrees and course work received at foreign colleges and universities shall be acceptable only if such course work could be counted as transfer credit from accredited colleges or universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(3) Persons applying for licensure or provisional licensure must possess a baccalaureate or post-baccalaureate degree with a major course of study in human nutrition, food and nutrition, nutrition education dietetics, or food systems management.

(4) In place of the requirements in paragraph (3) of this subsection, a person may have an equivalent major course of study defined as either:

(A) baccalaureate or post-baccalaureate degree or course work including a minimum of 30 semester hours specifically designed to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle. Of these 30 semester hours, a minimum of 18 semester hours must be from human nutrition, food and nutrition, dietetics, or food systems management. Of these 18 semester hours, at least three semester hours must be from four of the five following course areas:

(i) upper-division human nutrition related to disease;

(ii) upper-division food service systems management;

(iii) bio- or physiological chemistry, or advanced normal human nutrition;

(iv) food science; or

(v) upper-division nutrition education; or

(B) a baccalaureate or post-baccalaureate degree, including a major course of study meeting the minimum academic requirements to qualify for examination by the commission.

(5) The relevance to licensure of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(6) In the event that an academic deficiency is present, an applicant may have one year in which to complete the additional course work acceptable to the board before the application will be voided and the applicant will be required to reapply and to pay additional application fees.

(7) The semester hours may be part of a degree plan or in addition to a degree.

(b) Transcripts.

(1) Applicants must submit official transcripts of all relevant academic credit.

(2) The board shall accept no course which an applicant's transcript indicates was not completed with a passing grade for credit, nor shall any course completed twice within a five-year period be counted twice to meet the academic requirements as specified in paragraph (3) of this subsection.

(3) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

§711.6. Preplanned Professional Experience Requirements for Licensure.

(a) General. Applicants for examination must have satisfactorily completed an approved preplanned, documented professional experience program or internship in dietetics practice under the sponsorship of a licensed dietitian or a registered dietitian. The program or internship and the sponsor must be approved by the board or the association. A person who participates as a trainee in a board-approved program or internship must be provisionally licensed in accordance with §711.10 of this title (relating to Provisional Licensed Dietitians).

(1) An internship shall:

(A) be a dietetic internship, a coordinated undergraduate program in dietetics, or a preplanned professional experience program in dietetics approved by the association or by the board; and

(B) have an endorsement submitted from the director of the program with the application.

(2) A preplanned professional experience program shall be:

(A) an individualized program, beyond the undergraduate level approved by the board or the association;

(B) be planned and sponsored by at least one licensed or registered dietitian; and

(C) completed within three years after commencement of the program.

(3) Documentation of the internship or preplanned professional experience program must be provided to the board by completion of the proper documentation form prescribed by the board.

(4) Applicants who are registered in active status by the commission at the time of making application shall submit a photocopy of the registration card issued by the commission. The applicant's internship or preplanned professional experience program accepted for registration by the commission shall be acceptable for licensure by the board. No further proof of completion of an internship or preplanned professional experience shall be required.

(5) Provisional licensed dietitians shall be deemed to have met the academic requirements for admission into board approved preplanned professional experience and internship programs.

(b) Application and approval or disapproval procedures for board approved programs.

(1) The board shall delegate responsibility for the review and approval or denial of preplanned professional experience programs in dietetics and dietetic internships to the program approval committee. Determinations made by the committee are subject to ratification at the next regular meeting of the board. At the request of the committee, the chair of the board may appoint, on a volunteer basis, consultants recommended by the board from dietetic experience programs to advise the committee.

(2) Approval of each program shall be obtained prior to commencement of the program. Each program may commence upon receipt of notification from the executive secretary that the program has been approved by the program approval committee.

(3) Sponsor(s) or applicant(s) desiring approval of a program, or reapproval of program plans when applicable, shall submit to the executive secretary properly completed application forms provided by the board.

(A) The applicant or sponsor shall submit the application processing fee with the application.

(B) An original and four copies of the entire application must be submitted in binders with all pages clearly legible and numbered. All signatures on the required forms in the original application must be originals, not photocopies.

(C) If the application is revised or supplemented during the review process, the applicant must submit an original and four copies of a transmittal letter plus an original and four copies of the revision or supplement specified.

(D) If a page is to be revised, the complete new page must be submitted with the changed item or information clearly marked on the four copies, but not on the original page.

(4) The program approval committee may request clarification of program plans and/or additional information it deems necessary prior to deciding the approval status of the application.

(5) Sponsor(s) of all board approved and provisionally approved programs shall notify the program approval committee of any changes in the dietetic faculty and facilities, agencies, or organizations utilized in the program, and shall request program approval committee approval for major curriculum changes.

(6) All programs which are not approved, or which lost their approval, shall receive a report of deficiencies from the program approval committee and may reapply for approval following correction of the deficiencies previously cited. Documentation of the corrections shall be submitted with the reapplication. Application fees, and site inspection fees, if applicable, shall be submitted in the reapplication process.

(7) If the program approval committee determines that another state licensing agency's criteria for similar programs meets this

board's criteria, programs approved by that state licensing agency shall be deemed to be approved.

(c) General guidelines for board-approved programs.

(1) Students of the programs shall be licensed as provisional license dietitians in accordance with §711.10 of this title and shall be referred to as trainees.

(2) The sponsor(s) of the program shall be one or more licensed dietitians who shall be employed by the facilities, agencies, or organizations utilized in the program. The sponsor shall be employed either full-time, part-time, or on a consultant basis. All sponsor(s) shall observe and professionally assess the trainee's performance and competence.

(3) The sponsor, on behalf of the trainee, shall enter into written agreements of affiliation with appropriate accredited or certified and licensed organization(s).

(4) The program shall be planned to extend over a period of not less than 12 months, or more than three years. In the event that any program extends over its planned time, the sponsor(s) shall submit progress reports to the program approval committee at the planned completion date and annually thereafter until the program is completed. The progress reports shall include the reason(s) for delay and the anticipated date of completion of the program.

(5) Admission requirements shall include academic requirements as set out in §711.5(a)(3) and (4) of this title (relating to Academic Requirements for Licensure).

(6) The written agreement clarifying the terms of the program between the trainee and the sponsors shall include the following:

(A) a statement providing for periodic evaluation of the trainee's performance, including criteria for continuation in or dismissal from the program;

(B) a statement of the sponsor's responsibility for obtaining another sponsor, should the sponsor become unable to fulfill his/her commitments to the program for any reason. It must include a provision that a written evaluation of the trainee's performance shall be completed and submitted to the program approval committee and to the trainee by the sponsor(s) who is terminating the relationship; and

(C) a statement that recruitment and selection of applicants and participation in all programs shall be made without discrimination based on race, creed, gender, religion, national origin, or age.

(d) Sponsor guidelines for board-approved programs.

(1) The sponsor shall be a licensed or registered dietitian who has had five years of full-time experience as a licensed or registered dietitian.

(2) A sponsor may not sponsor more than one program at a time.

(e) Curriculum guidelines for board-approved programs.

(1) The curriculum of each program shall be planned and implemented primarily by the sponsoring dietetic faculty of the program. The trainee may assist in planning the curriculum.

(2) The curriculum offered shall be clearly defined in writing, and shall include statements of:

(A) goals, competencies, and specific objectives for all aspects of the program;

(B) dietetic learning experiences planned to meet the objectives; and

(C) methods and procedures planned to evaluate trainee performance in meeting the objectives.

(3) Dietetic learning experiences and work experiences in all programs shall include opportunities for decision making, development of independent judgment and professionalism, and shall require increasing levels of skill and responsibility.

(4) All programs shall include a variety of instructional methods and opportunities to strengthen the trainee's communication skills. Planned instruction implemented by the dietetic faculty shall be distributed throughout the program, and may be supplemented by classes offered by colleges and/or medical centers and by dietetic seminars and workshops.

(5) The curriculum shall include a minimum of 450 hours of work experience supervised, directed, and evaluated by a licensed or registered dietitian, as set out in §711.10(a)(4) of this title (relating to Provisional Licensed Dietitians), at a level of professional responsibility equivalent to that of a licensed dietitian, as set out in §711.4(a) of this title (relating to The Profession of Dietetics and Code of Ethics), plus a minimum of 450 hours of planned dietetic learning experiences with stated objectives divided to meet one of the following areas of specialization. All rotations must be supervised, directed, evaluated and signed off by a licensed dietitian or registered dietitian.

(A) General dietetics programs shall provide at least 40% of the curriculum in food service systems management, at least 40% of the curriculum in clinical dietetics, and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer a variety of clinical services and a comprehensive range of food service systems management functions. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the trainee.

(B) Clinical dietetics programs shall provide at least 60% of the curriculum in clinical dietetics, at least 20% of the curriculum in food service systems management, and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer a variety of clinical services, specializations, and subspecializations. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the trainee.

(C) Management dietetics programs shall provide at least 60% of the curriculum in food service systems management, at least 20% of the curriculum in clinical dietetics, and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer different types and sizes of food service systems, including at least one production and service facility that requires managing a complete range of food service subsystems. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the trainee.

(D) Community nutrition programs shall provide at least 40% of the curriculum in community nutrition, at least 10% of the curriculum divided between the education and consultation areas of dietetics, at least 25% of the curriculum in clinical dietetics, and at least 15% of the curriculum in food service systems management. The primary sites for learning experiences shall include federal, state, and locally funded community health agencies. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the trainee.

(6) The program shall, following completion of the learning and work experiences, include rotation relief for three weeks. Ro-

tation relief shall provide an opportunity for the trainee to demonstrate professional proficiency in the area of specialization. The sponsor, sponsoring licensed dietitian, or another licensed dietitian shall be available at reasonable times. The trainee shall perform at the level of a licensed dietitian based on the area of specialization. The rotation must be conducted for a minimum of 20 hours per week.

(f) Documentation for preplanned experience programs.

(1) The trainee shall provide to the board, at six-month intervals, a written report approved by the sponsor describing the trainee's activities.

(2) The sponsor(s) shall issue to each trainee, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the trainee(s) who have completed the program and of the date the program was completed.

(3) The sponsor shall submit to the executive secretary the curriculum plan and evaluation forms provided by the board and a written statement of completion. After approval by the board or its delegate, the executive secretary shall notify the trainee that the trainee is eligible to take the examination.

(4) A record of each trainee's activities, program plan, and evaluation instruments, including the number of hours spent fulfilling curriculum plans, shall be kept by the sponsor, shall be preserved for five years, and shall be made available to examining boards and other appropriate agencies if requested.

§711.7. Examination for Dietitian Licensure.

(a) The examination for licensure is the examination given by the commission or its designee.

(b) Registered dietitians. The board shall waive the examination requirement for applicants who are registered in active status by the commission at the time of making application to the board.

(c) Applications for examination.

(1) The board shall notify an applicant whose application has been approved. The board or its designee shall forward an examination registration form to each approved applicant.

(2) An applicant who wishes to take a scheduled examination must complete the registration form and return it with the appropriate fee to the board or its designee by the established deadline.

(3) Any applicant who fails to apply for and take the licensure examination within a period of three years after an examination approval notice is mailed to the applicant may have such approval withdrawn.

(d) Locations. Examinations administered by the commission or its designee will be held in locations to be announced by the commission.

(e) Grading. Examinations administered by the commission shall be graded by the commission or its designee.

(f) Results.

(1) If the examination is graded or reviewed by a national or state testing service, the board shall notify each examinee of the examination results within 14 days of the date the board receives the results from the testing service.

(2) If examination results will be delayed for more than 90 days after the examination, the board shall notify each applicant of the reason for the delay before the 90th day.

(3) No matter what numerical or other scoring system the national or state testing service may use in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail."

(g) Failures.

(1) An applicant who fails the examination prescribed by the board may take a subsequent examination after paying the examination fee.

(2) If requested in writing, the board shall furnish an applicant who fails an examination an analysis of performance.

(3) An applicant who fails the licensing examination three times shall have his/her application denied unless the applicant furnished the board an official transcript from an accredited college or university indicating completed course work taken for credit with a passing grade in the area(s) of weakness determined by analysis of the previous examination(s). Before the applicant will be scheduled for another examination, the applicant shall submit an official transcript showing course work completed in the area of weakness after the date of the last examination taken by the applicant.

(4) An applicant who completes course work as described in paragraph (3) of this subsection must file an updated application for examination with the application fee.

§711.8. Application Procedures.

(a) Fitness of applicants for licensure.

(1) In determining the fitness of an applicant for licensure, the board shall consider the following:

(A) the skills and abilities of an applicant to provide adequate nutrition services; and

(B) the ethical behavior of an applicant in relationships with other professionals and clients.

(2) In determining the fitness of applicants for licensure the board may request and consider any of the following:

(A) evaluations of supervisors or instructors;

(B) statements from persons submitting references for the applicant;

(C) evaluations of employers and/or professional associations;

(D) transcripts or findings from official court, hearing, or investigative proceedings; and

(E) any other information which the board considers pertinent to determining the fitness of an applicant.

(3) The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of, or delay of, licensure of the applicant:

(A) lack of the necessary skills and abilities to provide adequate nutrition services;

(B) misrepresentation of professional qualifications or affiliations with associations;

(C) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;

(D) use of misleading or false advertising;

(E) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(F) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;

(G) any misrepresentation in application or other materials submitted to the board; and

(H) the violation of any board rule in effect at the time of application which is applicable to an unlicensed person.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(2) Proof of successfully completing the Texas Jurisprudence Exam must be submitted with the application.

(3) The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(4) The board must receive all required application materials at least 60 days prior to the date the applicant wishes to take the examination.

(5) The executive secretary will send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the board's notice may be voided.

(c) Required application materials.

(1) The application form shall contain:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and board rules and agrees to abide by them;

(C) the applicant's permission to the board to seek any information or references it deems fit to determine the applicant's qualifications and fitness;

(D) a statement that the applicant, if issued a license, shall return the license certificate and license identification card to the board upon the revocation or suspension of the license;

(E) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(F) a statement that the applicant understands that materials submitted in the licensure process become the property of the board and are nonreturnable; and

(G) the signature of the applicant which has been dated.

(2) The internship or preplanned professional experience program documentation form shall contain:

(A) the applicant's name;

(B) the name and address of the agency, organization, or institution where the program was undertaken (a separate form should be used for each one);

(C) the name and job title of the director or coordinator of each program at the time;

(D) the inclusive dates of the program and the number of clock hours per week;

(E) the type of setting, the type of clients served, and the type of work performed;

(F) the credentials of the director or coordinator of each program; and

(G) the signed statement(s) of endorsements from the person(s) who can formally attest to the applicant's successful completion of experience as set out in §711.6(a)(1) and (2) of this title (relating to Preplanned Professional Experience Requirements for Licensure).

(3) Applicants must submit official transcript(s) of all relevant college work.

(4) If an applicant is or has been licensed, certified, or registered in another state, territory, or jurisdiction, the applicant must submit information required by the board concerning that license, certificate, or registration on official board forms.

(5) Vitae, resumes, and other documentation of the applicant's credentials may be submitted.

(6) A provisional licensed dietitian applicant must submit a completed supervision contract.

§711.9. Determination of Eligibility for Licensure.

(a) The board may make the final determination on the eligibility of an applicant.

(b) The board may delegate approval of applications for licensing to a committee of the board.

(c) The board may delegate approval of applications for licensing to the executive secretary.

(d) The board may disapprove the application if the person has:

(1) not completed the requirement in §711.5 of this title (relating to Academic Requirements for Licensure);

(2) not completed the requirements in §711.6 of this title (relating to Preplanned Professional Experience Requirements for Licensure), if applicable;

(3) failed to pass the examination prescribed by the board as set out in §711.7 of this title (relating to Examinations for Dietitian Licensure), if applicable;

(4) failed to remit any applicable fees required in §711.3 of this title (relating to Fees);

(5) failed or refused to complete properly or submit any application form(s) or endorsement(s), or deliberately presented false information on the application form, or any other form or document required by the board to verify the applicant's qualifications for licensure;

(6) been in violation of the Act;

(7) violated a provision of the code of ethics in §711.4 of this title (relating to The Profession of Dietetics and Code of Ethics);

(8) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §711.17 of this title (relating to Licensing of Persons with Criminal Convictions);

(9) had a license, registration, or certificate to practice dietetics in another state or jurisdiction which has been suspended, revoked, or otherwise restricted by the licensing entity or commission; or

(10) failed to submit proof of successfully completing the Texas Jurisprudence exam as required in §711.8(b) of this title (relating to Approval Procedures).

(e) If after review the executive secretary determines that the application should not be approved, the executive secretary shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice and hearing shall be in accordance with §711.18 of this title (relating to Violations, Complaints, and Subsequent Board Actions).

(f) An applicant whose application has been disapproved under subsection (d)(5) - (8) of this section shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board, of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

(g) Processing procedures are as follows.

(1) Time periods. The board shall comply with the following procedures in processing applications for licensure and renewal.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for licensure--20 working days;

(ii) letter of application deficiency--20 working days; and

(iii) issuance of license renewal after receipt of documentation of all renewal requirements--20 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. For the purpose of this section an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with law and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval for examination--20 working days;

(ii) initial letter of approval for licensure (exam waived)--20 working days;

(iii) letter of denial of licensure--20 working days; and

(iv) issuance of license renewal after receipt of documentation of all renewal requirements--20 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the executive secretary, the applicant may appeal to the chair of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chair at the address of the board that the applicant requests full reimbursement of all fees paid in that particular application process because the application was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the chair of the board. The chair shall provide written notice of the chair's decision to the applicant and the executive secretary. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included within the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the board is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§711.10. Provisional Licensed Dietitians.

(a) Sponsorship. The purpose of this section is to set out the nature and the scope of the sponsorship provided for a provisional licensed dietitian (PLD). The sponsor shall be a licensed dietitian.

(1) Sponsorship contract. The PLD must submit a contract on board forms to the board prior to the date that sponsorship is to begin. The contract shall include:

(A) the name and signature of the sponsor and the name and signature of the PLD;

(B) the license number of the sponsor and license number of the PLD if applicable;

(C) the primary location and address where nutrition services are to be rendered;

(D) a description of nutrition services to be rendered by the PLD;

(E) a statement that the sponsor and the PLD have read and agree to adhere to the requirements of this chapter; and

(F) the date that the sponsor and the PLD signed the contract.

(2) Termination. The sponsor must submit a written notification of termination of sponsorship to the board and the PLD within 14 days of when sponsorship has ceased. The PLD shall make a good faith effort to ensure that the sponsor submits the appropriate notification. The board notification of termination of sponsorship shall include:

(A) the name, license number, and signature of the sponsor and the name and license number of the PLD;

(B) a statement that sponsorship has terminated;

(C) the reason for termination;

(D) the date of termination of sponsorship; and

(E) a statement indicating whether the sponsor and the PLD have complied with the requirements of this chapter.

(3) Changes. Any change in the sponsorship contract shall require submission of a new contract.

(4) Requirements of sponsorship.

(A) The sponsor must have adequate training, knowledge, and skill to render competently any nutrition services that the PLD undertakes. The sponsor shall have discretion to refer the PLD for specific sponsorship from another licensed dietitian.

(B) The sponsor is responsible for determining the adequacy of the PLD's ability to perform the nutrition services.

(C) The sponsor may not sponsor more than three PLDs concurrently unless board approval is provided in advance.

(D) The PLD must clearly state the sponsored status to patients, clients, and other interested parties and must provide the name, address, and telephone number of the sponsor.

(E) The sponsor may not be employed by the PLD, may not lease or rent space from the PLD, and must avoid any dual relationship with the PLD which could impair the sponsor's professional judgment.

(F) The sponsor must provide each PLD with no less than one hour of regularly scheduled one-to-one, face-to-face meetings weekly, regardless of the number of hours employed per week. Group meetings are not a substitute for one-to-one meetings. A written record of the scheduled meetings must be maintained by the sponsor and include a summary of the PLD's work activities. The record shall be provided to the board on request.

(G) The sponsor must be available for discussion of any problems encountered by the PLD at reasonable times in addition to the scheduled meetings.

(H) The sponsor will provide an alternate licensed dietitian to provide sponsorship for the PLD in circumstances when the sponsor is not available for more than four continuous weeks.

(5) Payment. A PLD may not pay for sponsorship.

(b) Required sponsor. A PLD must have a sponsoring licensed dietitian at all times whether or not the PLD is actively employed.

(c) Upgrading a provisional license. The purpose of this subsection is to set out the procedure to upgrade from PLD to a licensed dietitian.

(1) The PLD who has completed a board approved experience program in accordance with §711.6 of this title (relating to Preplanned Professional Experience Requirements for Licensure) shall submit to the board a letter from the sponsor indicating the date the PLD completed the program.

(2) A PLD who becomes registered by the commission shall submit proof of current registration status with a written request to upgrade and submit the required fee for upgrade to a licensed dietitian.

(3) The requirements of sponsorship as defined in subsection (a)(4)(F) of this section, shall continue until the PLD becomes a licensed dietitian.

(d) Time limits.

(1) A provisional license is valid for one year from the date it is issued and may be renewed annually not more than twice by the procedures set out at §711.15 of this title (relating to License Renewal) except as noted in paragraph (2) of this subsection.

(2) If the PLD is actively completing the requirements of a program which meets the requirements of this section and the remainder of the program will not extend for more than a period of one additional year, the PLD may be renewed for an additional one year at the end of the second renewal, for a total of up to four years.

(e) Examination failures. An individual who fails the examination as set out in §711.7 of this title (relating to Examinations for Dietitian Licensure) three times after licensure as a PLD must complete course work taken for credit with a passing grade in the area(s) of weakness as determined by the board and within the time period established by the board.

§711.11. Qualifications of Licensed Dietitians to Provide Diabetes Self-Management Training.

(a) This section implements the Insurance Code, Article 21.53G, §4.

(b) Diabetes self-management training. Diabetes self-management training covers the following training:

(1) training provided to a qualified insured after the initial diagnosis of diabetes in the care and management of that condition, including nutrition counseling and proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified insured's symptoms or condition that requires changes in the qualified insured's self-management regimen; and

(3) periodic or episodic continuing education training when prescribed by an appropriate health care practitioner as warranted by the development of new techniques and treatments for diabetes.

(c) Providing diabetes self-management training as a member of a multi-disciplinary team.

(1) Prior to beginning to provide diabetes self-management training as member of a multi-disciplinary team under Insurance Code, Article 21.53G, §4(b)(2), a licensed dietitian must complete at least six hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall complete at least six hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(3) A licensed dietitian who is not a Certified Diabetes Educator and who is providing diabetes self-management training as a member of a multi-disciplinary team under Insurance Code, Article 21.53G, §4(b)(2), shall confine his or her professional services to nutrition education and/or counseling, lifestyle modifications, the application of self-management skills, reinforcing diabetes self-management training, and other acts within the scope of his or her professional education and training which are conducted under the supervision of the coordinator of the multi-disciplinary team.

(d) Providing the nutrition component of diabetes self-management training.

(1) Prior to beginning to provide the nutrition component of diabetes self-management training under Insurance Code, Article 21.53G, §4(b)(4), a licensed dietitian must complete at least six hours

of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall show proof to the board completion of at least six hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(e) Continuing education. The continuing education completed under this section shall meet the requirements described in §711.16 of this title (relating to Continuing Education Requirements). The continuing education completed under this section may be part of the credits required for annual renewal of a license.

(f) Submission of continuing education to the board. Upon written request by the board, the licensed dietitian shall submit to the board proof of completion of the continuing education completed under this section. The licensed dietitian shall submit the proof of completion in a manner and a timeframe acceptable to the board.

(g) Provisional Licensed Dietitians. A provisional licensed dietitian shall not provide diabetes self-management training under these rules.

(h) Certified Diabetes Educator. This section does not apply to a licensed dietitian who is a diabetes educator certified by the National Certification Board for Diabetes Educators.

(i) Non-application of rules. This section does not pertain to or restrict a licensed dietitian who does not qualify under this section from providing the nutrition component of diabetes self-management training within the scope of the license issued by the board, to a person:

(1) who is not a qualified insured as defined in the Insurance Code, Article 21.53G;

(2) who does not intend to seek payment for or reimbursement for diabetes self-management training; or

(3) without the written order of a licensed physician or other healthcare practitioner.

§711.12. Licensing.

(a) Issuance of licenses.

(1) The board will send each applicant whose application has been approved and who has passed the examination (if applicable) a license certificate and identification card containing a license number.

(2) The board shall replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or identification card or be accompanied by the damaged certificate or card.

(b) License certificates.

(1) The board shall prepare and provide to each licensee a license certificate and identification card which contain the licensee's name, license number, and expiration date.

(2) Official license certificates shall bear the signature of the chair. Official identification cards shall bear the signatures of the chair and the licensee.

(3) Any certificate or identification card issued by the board remains the property of the board and must be surrendered to the board on demand.

(4) The license certificate must be displayed in an appropriate and public manner as follows.

(A) The license certificate shall be displayed in the primary office or place of employment of the licensee.

(B) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

(5) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of an identification card in lieu of the original document. A file copy shall be clearly marked as a copy across the face of the document.

(6) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card.

§711.13. Temporary License.

(a) This section sets out the application procedures for a temporary license, which may be issued to a person licensed as a dietitian by another state, territory, or jurisdiction of the United States.

(b) Requirements. An applicant for a temporary license shall submit:

(1) an application in accordance with §711.8 of this title (relating to Application Procedures) and fee in accordance with §711.3 of this title (relating to Fees);

(2) a current copy of the law and rules of the other state, District of Columbia, or territory of the United States governing its licensing and regulation of dietitians;

(3) verification acceptable to the board that the applicant has passed the commission's examination/or an examination offered by another state; the District of Columbia; or a territory of the United States for licensure as a dietitian;

(4) verification that the licensee is or will be supervised by a licensed dietitian in the same manner as set out in §711.10 of this title (relating to Provisional Licensed Dietitians); and

(5) a copy of the applicant's dietitian's license or certificate in the other state, District of Columbia, or territory of the United States and the name, address and telephone number of the licensing or certifying agency.

(c) Time limit. A temporary license is valid for 180 days, until the date the board approves or denies the temporary licensee's application for a regular license, or until the applicant is notified that he or she has failed the first examination for which the applicant was eligible, whichever is earlier. A temporary license is not subject to renewal or extension for any reason. A person whose temporary license has expired is not eligible to receive another temporary license.

(d) Status change. The board shall issue a license to the holder of a temporary license after:

(1) the temporary licensee passes the examination required for licensure by the board or becomes a registered dietitian after completion of the commission's examination; and

(2) the board verifies that the temporary licensee has met the academic requirements set out in §711.5 of this title (relating to Academic Requirements for Licensure) and the experience requirements in §711.6 of this title (relating to Preplanned Professional Experience Requirements for Licensure), if applicable.

§711.14. Changes of Name or Address.

(a) The licensee shall notify the board of changes in name or preferred mailing address within 30 days of such change(s).

(b) Notification of address changes must include the name, mailing address, and zip codes, and be mailed, telephoned, faxed, or sent by electronic mail to the board.

(c) Before another license certificate and identification card will be issued by the board, notification of name changes must be mailed or faxed to the executive secretary and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The licensee shall remit the appropriate replacement fee as set out in §711.3 of this title (relating to Fees).

§711.15. License Renewal.

(a) General.

(1) A licensed dietitian must renew the license biennially on or before the last day of the licensee's birth month.

(2) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(3) The board shall not renew the license of the licensee who is in violation of the Act or board rules at the time of application for renewal.

(4) The board shall deny renewal of a license if renewal is prohibited by the Education Code, §57.491 (Loan Default Ground for Nonrenewal of Professional or Occupational License).

(5) A licensee must comply with applicable continuing education requirements in order to renew a license including the audit process described in §711.16 of this title (relating to Continuing Education Requirements).

(6) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(b) License renewal requirements.

(1) At least 30 days prior to the expiration date of a person's license, the department shall send notice to the licensee at the address in the department's records of the expiration date of the license, the amount of the renewal fee due and a license renewal form which the licensee must complete and return to the board with the required renewal fee.

(2) The license renewal form for all licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions.

(3) The sponsorship contract for the provisional licensed dietitian shall be signed by the sponsoring licensed dietitian. The information provided on the form shall indicate whether the sponsor and the provisional licensed dietitian have complied with §711.10 of this title (relating to Provisional Licensed Dietitians).

(4) The board shall not renew a license until it receives the renewal fee and documentation that the continuing education requirement has been met.

(5) The board shall issue to a licensee who has met all requirements for renewal a current identification card.

(c) Late renewal requirements.

(1) A person whose license has expired for less than one year may renew the license by submitting to the department the license renewal form and the appropriate late renewal fee. The postmark date shall be considered as the date of mailing.

(2) A person whose license has been expired one year or more may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license.

(d) Expiration of license.

(1) A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed dietitian" or "provisional licensed dietitian" or use the letters "LD" or "PLD", and may not use any facsimile of those titles in any manner.

(2) A person who fails to renew a license after one year is required to surrender the license certificate and license identification card to the board.

(e) Active duty. If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America, the licensee may renew the license in accordance with this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active duty shall be filed with the board along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the board along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee, but not the late renewal fee or any penalty fee.

(6) A licensee renewing under this subsection shall be required to submit the same amount of continuing education hours as required for regular renewal unless the licensee demonstrates to the satisfaction of the board that a hardship existed which prevented the licensee from obtaining the continuing education hours. Hardships may include medical reasons, combat duty, or assignment to a location where continuing education activities were not available.

§711.16. Continuing Education Requirements.

(a) The continuing education requirements are intended to maintain and improve the quality of services provided to the public by licensed dietitians and provisional licensed dietitians. Continuing education credit includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of licensed dietitians and provisionally licensed dietitians, thus improving nutrition care to the public.

(b) A licensee shall complete a minimum of 12 continuing education hours during each two-year licensing period.

(1) The hours must have been completed prior to the date of expiration of the license.

(2) The hours must be offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.

(c) The licensee shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the board at the time of renewal unless the licensee has been selected for audit by the board.

(d) The audit process shall be as follows.

(1) The board shall select for audit a random sample of licensees for each renewal month. Audit forms shall be sent to the selected licensees at the time the renewal notice is mailed.

(2) All licensees selected for audit will furnish documentation such as official transcripts, certificates, diplomas, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the board, to verify proof of having earned the continuing education hours. The documentation must be provided at the time the renewal form is returned to the board.

(3) Failure to timely furnish this information or knowingly providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee.

(e) Failure to complete the required continuing education.

(1) A person who fails to complete continuing education requirements for renewal holds an expired license and may not use the titles "licensed dietitian" or "provisional licensed dietitian".

(2) A person may renew late under §711.15(c) of this title (relating to License Renewal) after all the continuing education requirements have been met.

(f) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses related to dietetics;

(2) clinical courses related to dietetics;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in dietetics;

(4) instructing or presenting continuing education programs or activities that were offered or approved by the Commission on Dietetic Registration or its agents. Multiple presentations of the same programs only count once;

(5) acceptance and participation in poster sessions offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited one hour for six poster sessions with a maximum of two clock hours for 12 poster sessions;

(6) books or articles published by the licensee in relevant professional books and referred journals. A minimum of three continuing education hours will be credited for the publication; or

(7) self-study of professional materials that include self-assessment examinations. Six hours maximum will be credited for self-study during the two-year licensure period.

(g) Activities unacceptable as continuing education for which the board may not grant continuing education credit are:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (b)(1) of this section;

(4) activities described in subsection (f) of this section which have been completed more than once during the continuing education period;

(5) performance of duties that are routine job duties or requirements; or

(6) participation in conference exhibits.

(h) Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit.

(2) An activity which meets the criteria of subsection (f)(2) or (3) of this section shall be credited on a one-for-one basis with CPE as approved by the American Dietetics Association.

(i) The Texas Jurisprudence Exam shall be required as follows.

(1) The licensee must successfully complete the Texas Jurisprudence Exam for renewal.

(2) Proof of successfully completing the exam must be retained by the licensee as required in subsection (c) of this section.

(3) One hour of continuing education credit will be granted for successful completion of the Texas Jurisprudence Exam.

§711.17. Licensing of Persons with Criminal Convictions.

(a) This section establishes guidelines and criteria for the eligibility of persons with criminal convictions to obtain and retain licenses as dietitians.

(b) The board shall consider the criminal conviction of a licensee or applicant as possible grounds for disciplinary action or application denial.

(c) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee. In considering whether a criminal conviction directly relates to the profession of dietetics, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice dietetics;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a dietitian. In making this determination, the board will apply the criteria outlined in Texas Occupations Code, §53.023 (relating to Additional Factors).

(d) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) the misdemeanor of knowingly or intentionally practicing dietetics without a license;

(2) an offense involving moral turpitude;

(3) the misdemeanor of failing to report child abuse or neglect;

(4) a misdemeanor involving deceptive business practices;

(5) the offense of assault or sexual assault;

(6) the felony offense of insurance claim fraud;

(7) a misdemeanor and/or a felony offense under various titles of the Texas Penal Code:

(A) concerning Title 5 offenses against the person;

(B) concerning Title 7 offenses against property;

(C) concerning Title 8 offenses against public administration;

(D) concerning Title 9 offenses against public order and decency;

(E) concerning Title 10 offenses against public health, safety, and morals; and

(F) concerning Title 4 offenses of attempting or conspiring to commit any of the offenses in subparagraphs (A) - (E) of this paragraph; or

(8) any other misdemeanor or felony directly relating directly relating to the duties and responsibilities of a licensee.

(e) Procedures for disciplinary action or application denial against persons with criminal convictions.

(1) The board's executive secretary will give written notice to the person that the board intends to take disciplinary action or deny the application after a hearing in accordance with the provisions of the Administrative Procedure Act, and the board's hearing procedures.

(2) If the board takes disciplinary action or denies an application under these sections, the executive secretary will give the person written notice of the reasons for the decisions.

§711.18. Violations, Complaints and Subsequent Board Actions.

(a) A complaint may be filed in writing with the board.

(b) Upon receipt of a complaint, the executive secretary shall send an acknowledgment letter to the complainant. The executive secretary may accept an anonymous complaint if there is sufficient information for the investigation.

(c) A complaints committee shall be appointed to work with the executive secretary to:

(1) review each complaint and determine whether the complaint fits within the category of a serious complaint affecting the health and safety of clients or other persons;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) resolve the issues of the complaint which arise under the Act or this chapter.

(d) Prior to or during an investigation, the executive secretary or his or her designee shall request a response from the licensee or person against whom an alleged violation has been filed to gather informa-

tion required by the complaints committee of the board. The licensee or person against whom an alleged violation has been filed must respond within 15 working days of the executive secretary's request.

(e) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive secretary may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the complaints committee.

(f) If it is determined that there are sufficient grounds to support the complaint, the matters in question shall be investigated. The executive secretary or the committee may initiate the investigation.

(g) If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(h) If a written complaint is filed with the board that the board has the authority to resolve, the board shall notify the parties to the complaint periodically of the status of the complaint unless the notice would jeopardize an undercover investigation.

(i) Disciplinary Action; Notices. The board may deny, revoke, temporarily suspend, or suspend a license, or may probate disciplinary action, or may issue a reprimand or impose an administrative penalty to a person who:

(1) violates a provision of the Act;

(2) violates a rule adopted by the board;

(3) offers to pay or agrees to accept any remuneration, directly or indirectly, to or from any person or entity for securing or soliciting a client or patronage; or

(4) is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Code of Criminal Procedure, Chapter 56.

(A) Prior to institution of formal proceedings to discipline a licensee, the board shall give written notice to the licensee of the facts or conduct alleged to warrant the disciplinary action. The notice shall inform the licensee or applicant of the opportunity to retain legal representation. The licensee or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(B) If denial, revocation, or suspension of a license is proposed, the board shall give written notice of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 15 working days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

(C) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth working day after the notice is mailed to the last address known to the board unless another date is reported by the United States Postal Service.

(j) Cease and Desist Order. If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of dietetics, the board, after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(k) Assessment of Administrative Penalties. The assessment of an administrative penalty is governed by the Act. The amount of an administrative penalty shall be based on the following criteria.

(1) The seriousness of a violation shall be categorized by one of the following severity levels:

(A) Level I--violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);

(B) Level II--violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or

(C) Level III--violations that have no or minor health or safety significance.

(2) The range of administrative penalties by severity levels is as follows:

(A) Level I--up to \$5,000 per day;

(B) Level II--up to \$2,500 per day; or

(C) Level III--up to \$1,250 per day.

(3) Subsequent violations in the same severity level for which an administrative penalty has previously been imposed shall be categorized at the next higher severity level.

(4) Adjustments to the range of an administrative penalty may be made for:

(A) prompt reporting;

(B) corrective action;

(C) compliance history; or

(D) multiple violations.

(l) Suspension, Temporary Suspension, Revocation, or Denial.

(1) If the board suspends a license, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(2) If a suspension overlaps a license renewal date, the person suspended shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(3) Upon the revocation, suspension or non-renewal of a license, a licensee shall return his or her license certificate and all existing renewal cards to the executive secretary.

(4) The board or the complaints committee of the board may suspend a license on an emergency basis.

(m) Emergency Suspension. The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(1) A license may be suspended under this section without notice or hearing on the complaint if:

(A) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(B) a hearing is held as soon as practicable as described in paragraph (2) of this subsection and Texas Government Code, Chapter 2001.

(2) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

(n) Monitoring of Licensees.

(1) The executive secretary shall maintain a complaint tracking system.

(2) A licensee that has had disciplinary action taken against his or her license may be required to submit regularly scheduled reports to the executive secretary.

(3) The executive secretary shall review the reports and shall provide the reports to the complaints committee.

(4) The complaints committee may consider more severe disciplinary proceedings if the licensee fails to comply with the provisions of a disciplinary order.

§711.19. Formal Hearings.

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or the failure to appear by telephone in accordance with the notice of hearing.

(b) Remedies available upon default. The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001, and the State Office of Administrative Hearings Rules of Procedure.

(d) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final pursuant to the provisions of the Texas Government Code, Chapter 2001.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code, Chapter 2001.

(e) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the

notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last Action after the Hearing.

(f) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statute and shall be filed with the board.

(g) Appeals. All appeals from final board orders or decisions shall be governed by the APA or other pertinent statute and shall be addressed to the board.

§711.20. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal conference held to determine whether the matters in controversy can be resolved without further proceedings.

(b) The decision to hold a conference shall be within the discretion of the executive secretary or a member of the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive secretary shall establish the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than 10 working days prior to the date of the informal conference by certified mail, return receipt requested to the last known address of the licensee or applicant. The licensee or applicant may waive the 10-day notice requirement.

(e) The notice shall inform the licensee or applicant of the nature of the alleged violation or the reason for application denial; that the licensee may be represented by legal counsel; that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate within time limits set by the executive secretary; that the board's legal counsel shall be present; that the licensee's or applicant's attendance and participation is voluntary; and that the informal conference shall be canceled if the licensee or applicant notifies the executive secretary that he or she or his or her legal counsel will not attend. A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the informal conference.

(f) At least one member of the complaints committee shall be present at an informal conference.

(g) The conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(h) The licensee, the licensee's attorney, the board's attorney, the executive secretary and the complaints committee member may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(i) The board's legal counsel may attend each informal conference. The complaints committee member or executive secretary may call upon the attorney at any time for assistance in the informal conference.

(j) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(k) The complaints committee member or the executive secretary may exclude anyone from all or part of the informal conference.

(l) Any written statement submitted by the complainant shall be reviewed at the conference.

(m) At the conclusion of the informal conference, the complaints committee member or the executive secretary may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act or this chapter. The complaints committee member may also conclude that the board lacks jurisdiction; conclude that a violation of the Act or this chapter has not been established; order that the investigation be closed; or refer the matter for further investigation.

(n) The licensee or applicant may either accept or reject the recommendations at the informal conference. If the recommendations are accepted, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within 10 working days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.

(o) If the licensee or applicant signs and accepts the proposed recommendations, the agreed order shall be submitted to the complaints committee and the board for approval. Placement of the agreed order on the committee and board agendas shall constitute only a recommendation for approval by the board.

(p) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(q) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(r) If the board does not approve a proposed agreed order, the licensee or applicant shall be so informed. The matter shall be referred to the executive secretary for other appropriate action.

(s) A proposed agreed order is not effective until the board has approved the agreed order and the order is signed by the board chair.

(t) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the APA, Texas Government Code, §2001.054(c).

(u) Refund Order.

(1) The board may order a license holder to pay a refund to a client or other payer as provided in an agreement resulting from an informal settlement conference instead of, or in addition to, imposing an administrative penalty under this chapter.

(2) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the client or other payer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

§711.21. Default Orders.

(a) Waiver of right to hearing. If a right to a hearing is waived, the board shall consider an order taking appropriate disciplinary action as described in the written notice to the licensee or applicant.

(b) Notification. The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Board order. Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

§711.22. License Suspension or Denial Relating to Child Support and Child Custody.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the executive secretary shall immediately determine if the board has issued a license to the obligator named in the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to engage in the practice of dietetics or continues to use the titles "Licensed Dietitian," or the initials "L.D.," after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive secretary shall promptly issue the suspended license to the individual if the individual is otherwise qualified for the license.

(h) The individual shall pay a reinstatement fee in an amount equal to the annual renewal fee set out in §711.3 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

(i) In accordance with the Family Code §232.0135, the board shall deny the license renewal application of a license holder who has failed to pay child support or failed to comply with the terms of an order providing for the possession of or access to a child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900637

Janet Hall
Chair
Texas State Board of Examiners of Dietitians
Earliest possible date of adoption: March 29, 2009
For further information, please call: (512) 458-7111 x6972

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91 CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.208

The Credit Union Department withdraws the proposed new §91.208 which appeared in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9025).

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900585
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: February 12, 2009
For further information, please call: (512) 837-9236

7 TAC §91.209

The Credit Union Department withdraws the proposed amendments to §91.209 which appeared in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9026).

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900586
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: February 12, 2009
For further information, please call: (512) 837-9236

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS SUBCHAPTER A. GENERAL RULES

7 TAC §91.121

The Credit Union Commission (Commission) adopts new §91.121 concerning complaint notification without changes to the text published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9025). The new rule adds requirements for credit unions to provide notice describing the process for filing complaints, including placing the notice on its website and giving the notice to members with the privacy notice or when the member joins the credit union. The new rule has been moved from Chapter 97 to Chapter 91.

The new rule is adopted as a result of recommendations from the Sunset Commission staff.

The Commission received no comments with respect to the new rule. A public hearing was held on Friday, January 16, 2009 at 9:00 a.m. at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752. No comments were received at that hearing.

The new rule is adopted under the provisions of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under §15.409, which authorizes the Commission to establish methods for notifying consumers and members how to direct complaints to the Department.

The specific section affected by the new rule is Texas Finance Code, §15.409.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900590

Harold E. Feeney

Commissioner

Credit Union Department

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Proposal publication date: November 7, 2008

For further information, please call: (512) 837-9236



SUBCHAPTER G. LENDING POWERS

7 TAC §91.704

The Credit Union Commission (Commission) adopts amendments to §91.704 concerning real estate lending without changes to the text published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9027). The amendments emphasize the requirement that credit unions must have appropriate policies in place before beginning real estate lending. The amendments also correct an inadvertent reduction in the regulatory loan-to-value limit for purchase money second mortgage loans. Finally, the amendments also clarify the loan-to-value limits that apply to the property collateralizing the loan and specify that unfunded commitments and lines of credit must be included in the calculation of the sums borrowed.

The amendments to the rule are adopted to clarify the rule and eliminate discrepancies with other rules.

The Commission received no comments with respect to these rule amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, January 16, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which concerns loans to members.

The specific section affected by the amended rule is Texas Finance Code, §124.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900592

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SUBCHAPTER H. INVESTMENTS

7 TAC §91.801

The Credit Union Commission (Commission) adopts amendments to §91.801, concerning investments in credit union service organizations (CUSOs), with changes to the text published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9028). The amendments clarify the limit on the amount that may be invested in any one CUSO, as well as limiting the aggregate total of the loans to and investments in all CUSOs to 10% of the total assets of the credit union. The non-substantive change adds a comma for clarification. Also in subsection (h) the reference to §97.113(d) is corrected to §97.113(e).

The amendments are adopted to clarify the language of the rule and to limit for safety and soundness reasons the amount a credit union has at risk in a CUSO.

The Commission received no comments with respect to these rule amendments. A public hearing on the amendments was held on Friday, January 16, 2009 at 9:00 a.m. at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752. No comments were received at that hearing.

The amendments are adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351 and §124.352, which authorize the Commission to establish rules for investments.

The specific sections affected by the amended rule are Texas Finance Code, §124.351 and §124.352.

§91.801. Investments in Credit Union Service Organizations.

(a) Definition. When used in this section, a credit union service organization (CUSO) is an organization whose primary purpose is to strengthen or advance the credit union movement, serve or otherwise assist credit unions or their operations, and provide products or services authorized by subsection (f) of this section to credit unions and their members.

(b) A credit union by itself, or with other parties, may organize, invest in or make loans to a CUSO only if it is structured and operated in a manner that demonstrates to the public that it maintains a legal existence separate from the credit union. A credit union and a CUSO must operate so that:

- (1) their respective business transactions, accounts, and records are not intermingled;
- (2) each observes the formalities of their separate corporate or other organizational procedures;
- (3) each is adequately capitalized as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;
- (4) each is held out to the public as a separate and distinct enterprise;

(5) all transactions between them are at arms length and consistent with sound business practices as to each of them; and

(6) unless the credit union has guaranteed a loan to the CUSO, all borrowings by the CUSO indicate that the credit union is not liable.

(c) Notice. A credit union shall provide written notice to the commissioner of its intent to make an initial investment in a CUSO, make an initial loan to a CUSO, make a material change to a CUSO's organizational structure, or perform new activities in an existing CUSO at least 15 days prior to commencing such activity. The written notice must include a complete description of the credit union's investment in or loan to the CUSO, the activity to be conducted, and a representation and undertaking that the activity will be conducted in accordance with applicable law and in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO. The credit union shall provide any additional information reasonably requested by the commissioner, which may include a written legal opinion that the CUSO has either been established in a manner that will limit the credit union's potential exposure, or that the new activity or change to its organizational structure will not result in the credit union's potential exposure being more than the loss of funds invested in or loaned to the CUSO.

(d) Limitations. The board of directors of a credit union that organizes, invests in, or lends to any CUSO shall establish, in writing, the maximum amount relative to the credit union's net worth, that will be invested in or loaned to any one CUSO. The maximum amount invested in any one CUSO may not exceed the statutory limit established by Texas Finance Code §124.352(b). Total investments in and total loans to CUSOs will be measured consistent with generally accepted accounting principles (GAAP) and shall not, in the aggregate, exceed 10% of the total unconsolidated assets of the credit union, unless the credit union receives the prior written approval of the commissioner. The amount of loans to CUSOs, cosigned, endorsed, or otherwise guaranteed by the credit union, shall be included in the aggregate for the purpose of determining compliance with the limitations set forth in this section.

(e) Prohibitions. No credit union may invest in or make loans to a CUSO:

(1) if any officer, director, committee member, or employee of such credit union or any member of the immediate family of such persons owns or makes an investment in or has made or makes a loan to the CUSO;

(2) unless the organization is structured as a corporation, limited liability company, registered limited liability partnership, or limited partnership, and the credit union has obtained a written legal opinion that the CUSO is established in a manner that will limit the credit union's potential exposure to not more than the loss of funds invested in or loaned to such CUSO;

(3) if the CUSO engages in any revenue producing activity other than the performance of services for credit unions or members of credit unions, and such activity equals or exceeds one half (1/2) of the CUSO's total revenue;

(4) unless prior to investing in or making a loan to a CUSO the credit union obtains a written agreement which requires the CUSO to follow GAAP, render financial statements to the credit union at least quarterly, and provide the department, or its representatives, complete access to the CUSO's books and records at reasonable times without undue interference with the business affairs of the CUSO;

(5) if the CUSO is not adequately bonded or insured for its operations;

(6) if the CUSO does not obtain an annual opinion audit, by a licensed Certified Public Accountant, on its financial statements in accordance with generally accepted auditing standards, unless the investment in or loan to the CUSO by any one or more credit unions does not exceed \$100,000 or the CUSO is wholly owned and the CUSO is included in the annual consolidated financial statement audit of its parent credit union; or

(7) if any director is an employee of the CUSO, or anticipates becoming an employee of the CUSO upon its formation.

(f) Permissible activities and services. The commissioner may, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services. Otherwise, a credit union may invest in or loan to a CUSO that is engaged in providing products and services that include, but are not limited to:

(1) operational services including credit and debit card services, cash services, wire transfers, audits, ATM and other EFT services, share draft and check processing and related services, shared service center operations, electronic data processing, development, sale, lease, or servicing of computer hardware and software, alternative methods of financing and related services, other lending related services, and other services or activity, including consulting, related to the routine daily operations of credit unions;

(2) financial services including financial planning and counseling, securities brokerage and dealer activities, estate planning, tax services, insurance services, administering retirement, or deferred compensation and other employee or business benefit plans;

(3) internet based or related services including sale and delivery of products to credit unions or members of credit unions; or

(4) any other product, service or activity deemed economically beneficial or attractive to credit unions or credit union members if approved, in writing, by the commissioner.

(g) Compensation. A credit union director, senior management employee, or committee member or immediate family member of any such person may not receive any salary, commission, or other income or compensation, either directly or indirectly, from a CUSO affiliated with their credit union, unless received in accordance with a written agreement between the CUSO and the credit union. The agreement shall describe the services to be performed, the rate of compensation (or a description of the method of determining the amount of compensation) and any other provisions deemed desirable by the CUSO and the credit union. The agreement, and any amendments, must be approved by the board of directors of the credit union and the board of directors (or equivalent governing body) of the CUSO prior to any performance of service or payment and annually thereafter. For purposes of this section, senior management employee shall include the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above), and the chief financial officer; and immediate family shall include a person's spouse or any other person living in the same household.

(h) Examination fee. If a CUSO is requested by the commissioner to make its books and records available for inspection and examination, the CUSO shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). The commissioner may waive the supplemental examination fee or reduce the fee as he deems appropriate.

(i) Exclusion. A credit union which has a net worth ratio greater than six percent (6%) and is deemed adequately capitalized by its insuring organization may invest in or make loans to a CUSO that is not limited by the restriction set forth in subsection (e)(3)

of this section; provided the activities of the CUSO are exclusively limited to activities which could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union. Notwithstanding this exclusion, all other provisions of the act and this chapter applicable to a CUSO apply. In the event a credit union's net worth declines below the required thresholds, the credit union may not renew, extend the maturity of, or restructure an existing loan, advance additional funds or increase the investment in the CUSO without the prior written approval of the commissioner.

(j) Divestiture. If the limitations in subsection (d) of this section are reached or exceeded solely because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, divestiture is not required. A credit union may continue to invest up to the limitation without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900591

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: March 4, 2009

Proposal publication date: November 7, 2008

For further information, please call: (512) 837-9236



CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.106

The Credit Union Commission (Commission) adopts the repeal of existing rule §97.106 concerning complaint notice without changes. The proposed repeal was published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9028). The rule is replaced by new §91.121 which sets out additional ways credit unions must notify members how they may file a complaint with the Department.

The rule is repealed as a result of the Commission's adoption of a replacement rule in Chapter 91.

The Commission received no comments with respect to the proposed repeal. A public hearing on the repeal was held on Friday, January 16, 2009 at 9:00 a.m. at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752. No comments were received at that hearing.

The repeal is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under §15.409, which authorizes the Commission to establish methods for notifying consumers and members how to file a complaint with the Department.

The specific section affected by the repeal is Texas Finance Code, §15.409.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME PROGRAM RULE

SUBCHAPTER A. GENERAL

10 TAC §53.1, §53.8

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC §53.1 and §53.8, concerning the HOME Program, without changes to the proposed text as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 15), and will not be republished.

The amendments make changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations.

No comments were received concerning the proposed amendments.

The Board approved the final order adopting the amendments on February 5, 2009.

The amendments are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2009.

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Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: January 2, 2009

For further information, please call: (512) 475-3916



SUBCHAPTER C. PROGRAM ACTIVITIES

10 TAC §53.30

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §53.30, concerning the HOME Program, without changes to the proposed text as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 16), and will not be republished.

The amendment makes changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations.

No comments were received concerning the proposed amendment.

The Board approved the final order adopting the amendments on February 5, 2009.

The amendment is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. APPLICATION REQUIREMENTS AND PROCEDURES

10 TAC §53.47

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §53.47, concerning the HOME Program, without changes to the proposed text as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 17), and will not be republished.

The amendment makes changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations.

No comments were received concerning the proposed amendment.

The Board approved the final order adopting the amendments on February 5, 2009.

The amendment is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Depart-

ment with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Michael Gerber

Executive Director

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SUBCHAPTER G. LOANS AND CONTRACT ADMINISTRATION

10 TAC §53.80

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §53.80, concerning the HOME Program, without changes to the proposed text as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 17), and will not be republished.

The amendment makes changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations.

No comments were received concerning the proposed amendment.

The Board approved the final order adopting the amendments on February 5, 2009.

The amendment is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Michael Gerber

Executive Director

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §§60.101 - 60.124

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 60, Subchapter A, §§60.101 - 60.124, concerning Compliance Monitoring Rules. Sections 60.102, 60.103, 60.107, 60.108, 60.111, 60.116, and 60.118 are adopted with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9625.) Sections 60.101, 60.104 - 60.106, 60.109, 60.110, 60.112 - 60.115, 60.117, and 60.119 - 60.124 are adopted without changes and will not be republished.

These sections are amended to improve the definition of Substantial Construction, improve the selection of units for physical inspections, and allow for compensation of staff time in checking resident applications.

The proposed amendments were available for public comment until December 18, 2008. In addition to publishing the proposed amendments in the *Texas Register*, they were made available to the public on the Department's website. Written comments on the proposed amendments were received by email.

Public comments and the Department's responses are presented in the order in which the sections appear in the chapter. The numbers in parentheses by the section titles correspond to the name of the person or entity that made the comment. The summary of each comment is followed by a staff response and the reasons the Department agreed or disagreed with the comment.

Public comments on the proposed amendments were received by: (1) HFI Management/Encore Residential; (2) Aspen Square Management; (3) Texas Affiliation of Affordable Housing Providers; (4) Rural Rental Housing Association of Texas; and (5) individual.

GENERAL COMMENT (4): Comment received suggesting that the Department's *Issues of Noncompliance* report be modified to indicate the number of points allotted to violations. Currently, the report only shows the cumulative total.

DEPARTMENT RESPONSE: Department staff attempted to accommodate this request. Compliance Monitoring staff members are always available to help owners and managers calculate their compliance score.

GENERAL COMMENT (4): Comment received noting that owners and managers must review their Uniform Physical Condition Standards (UPCS) inspection report to determine why the inspection resulted in Major or Minor violations findings.

DEPARTMENT RESPONSE: The cover letter sent with the report specifies one of the following reasons for the appropriate finding: For Major violations at least one of the following was observed: Exigent Fire and Safety Hazards were not corrected within 24 hours, 20 percent or more of buildings or dwelling Units inspected had a level three violation; or the property scored below 60 percent. For Minor violations at least one of the following was observed: 20 percent or more of the buildings or dwelling Units inspected had any level two violation; or the property scored between 60 percent and 79 percent.

Owners and managers must look at the report to determine what needs to be corrected. It would be redundant for the Department's cover letter to list all violations. The Compliance Monitor-

ing staff is available to help owners and managers understand their UPCS report. No change recommended.

§60.102. Definitions.

COMMENT (3, 5): Comment received regarding the definition of commencement of substantial construction. Specifically, the commenter suggested that the industry would have difficulty adhering to the section of the proposed definition that requires "all major underground utility transmission in place." The commenter stated that utility companies require sidewalks before transformers can be installed and therefore it would not be possible to meet this requirement by the commencement of substantial construction. Another commenter suggested that major utility transmission infrastructure cannot be completed until near the end of construction.

DEPARTMENT RESPONSE: The Department concurs with the difficulty in requiring all major utility transmission infrastructure to be in place. As utilities are required to construct the development, however, Department staff expects that all necessary utilities be available at the property to commence substantial construction and has amended the section accordingly. No change recommended.

COMMENT (3, 5): Comment also suggested that the definition of commencement of substantial construction has become complex and that the standard should be reverted to spending a percentage of the construction contract.

DEPARTMENT RESPONSE: Staff concurs that the definition has become more complex. Staff believes that physical standards are better measures of progress than financial ones. Unfortunately, this makes the definition more complex. In order to provide some flexibility, staff recommended the following change to the definition which still requires owners to meet some physical tests but will also allow progress to be documented by expending funds.

(22) Substantial Construction--

(A) The minimum activity necessary to meet the requirements of substantial construction for new construction Developments will be defined as:

- (i) Delivery of an executed partnership agreement with the investor;
- (ii) Delivery of the executed construction loan and construction loan agreement;
- (iii) completion of the foundation of the clubhouse (if applicable);
- (iv) having all permits;
- (v) all grading completed (not including landscaping);
- (vi) all necessary utilities available at the property; and
- (vii) all Right of Way access and one of the following:
 - (I) 20 percent of the construction contract amount for the development expended, adjusted for any change orders and certified by the inspecting architect; or
 - (II) 100 percent of the foundations in place and 50 percent of the framing completed; or
 - (III) 25 percent of all residential buildings roofed.

§60.109. Utility Allowances.

COMMENT (1): Comment made suggesting that provisions of the rule contradict the Texas Commission on Environmental

Quality (TCEQ) rules regarding submetering. In addition, the commenter suggested that the new rule will encourage wastefulness of a natural resource.

DEPARTMENT RESPONSE: Staff disagreed with the comment suggesting a contradiction between the Compliance Monitoring rules and the TCEQ rules. The Compliance Monitoring rules allow owners to submeter and charge residents for water and wastewater usage. However, the amount is capped by the Housing Tax Credit rent limit. The TCEQ Rules do not *require* owners to bill residents for the full amount of water or wastewater they use. It is permitted, not required; therefore, no contradiction exists. Furthermore, the Compliance Monitoring rules reflect the federal requirements of Treasury Regulation 1.42-10; the Department must require owners to comply. No change recommended.

§60.116. Property Condition Standards.

COMMENT (4): Comment received suggesting that vacant units should not be inspected unless 15% or more of a property's units are vacant. The commenter noted that there are often "make ready" issues with vacant units.

DEPARTMENT RESPONSE: Staff agreed that special consideration be given to vacant units. However, owners and managers must turn units within a reasonable period. Staff recommended the addition of the following subsection:

(h) Selection of units for inspection:

- (1) Vacant units will not be inspected (alternate units will be selected) if a unit has been vacant for fewer than thirty (30) days.
- (2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

COMMENT (5): Comment received requesting clarification on the cure period for certain physical violations.

DEPARTMENT RESPONSE: Under the Uniform Physical Condition Standards, inspection protocol deficiencies are classified as level one, two or three. However, there is a special class of level three violations called Exigent and Fire Safety Hazards. Those special level three violations are separately noted for the property representative, in writing, the day of the inspection. The property representative must sign a form acknowledging those violations, correct them within twenty-four (24) hours, and notify the Department of the correction within seventy-two (72) hours. By far, the most common Exigent and Fire Safety Hazards noted are inoperable smoke detectors and blocked fire egresses due to resident furniture.

The Department recognizes that owners have little control over these issues. Therefore the Department does not take these violations into consideration, as long as they are corrected within the required timeframes. However, other types of level two and level three violations are more indicative of the overall condition of the property and will be taken into consideration, even if corrected within twenty-four (24) hours. No change recommended.

§60.118. Special Rules regarding Rents and Rent Violations.

COMMENT (2): Comment received suggesting the Compliance Monitoring rules "have taken a very narrow interpretation of the 8823 Audit Guide" regarding allowable fees that prospective residents can be charged. In addition, the commenter suggested that the Department approve a standard dollar amount that can

be added to the application fee to cover staff time spent checking an applicant's qualifications. The commenter suggested that staff time averages one hour per application and that an hour of staff time is \$30, which includes payroll overhead. The commenter also suggested that the Department annually pre-approve the application fee charged by each apartment complex the Department monitors.

DEPARTMENT RESPONSE: Staff conferred with the Internal Revenue Service on this issue and the IRS agreed that staff time spent checking the applicant's income, credit history, and landlord references can be included in the application fee. However, payroll overhead cannot be included.

In addition, Department staff reviewed the time study, submitted by the commenter, which indicated the average time spent checking an applicant's income, credit history, and landlord references to be under 30 minutes. Department staff also surveyed several affordable housing management companies who reported an average leasing consultant salary of approximately \$11.00 per hour. Further, the approval of application fees on an annual basis for all properties would be an onerous task for the Department and owners. Staff recommended the following change to subsection (c) following the sentence "Owners must only charge...."

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit history and landlord references may be included in the Development's application fee. Development owners may add \$5.50 to their other out of pocket costs for processing an application without providing documentation. Should an owner desire to include a higher amount to cover staff time, wage information and a time study must be supplied to the Department upon request. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Form(s) 8823. The noncompliance will be corrected on the later of January 1st of the next year or as of the date the application fee is reduced and evidence of a reduced application fee is supplied to the Department. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January first of the next year or until the application fee is reduced.

§60.121. Material Noncompliance Methodology.

COMMENT (4): Comment received stating that it is unfair for noncompliance events to have a corrected point value that remains on the property's score for three years. The commenter stated "Some issues should remain on the score, some which are simple clerical or lease wording issues should be removed as soon as they are corrected."

DEPARTMENT RESPONSE: Since specific suggestions as to which issues should remain on a property's score and which should be dropped was not provided, no change was recommended. Owners and managers are encouraged to provide spe-

cific comment on this issue during the roundtables held prior to each rule cycle.

The Board approved the final order adopting these amendments, as well as minor clerical corrections, on February 5, 2009.

The amended sections are adopted pursuant to authority granted in §2306.053 of the Texas Government Code, which grants the Department general rulemaking authority to carry on the powers expressly granted or necessarily implied by Chapter 2306.

§60.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by §42(i)(1) of the Internal Revenue Code (IRC) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure. The Department reserves the right to extend the Affordability Period for HOME properties that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules, regulations, and Application representations.

(2) Application--An Application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702)

(3) Architect of Record--The architect licensed in the jurisdiction that the project is located in, who prepares, stamps and signs the construction documents, and is legally recorded as the architect for the project.

(4) Board--The governing Board of the Texas Department of Housing and Community Affairs.

(5) Code--The U.S. Internal Revenue Code of 1986, as amended from time-to-time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued by the United States Department of the Treasury or the Internal Revenue Service.

(6) Compliance Period--With respect to a Housing Tax Credit building, the period of fifteen (15) taxable years, beginning with the first year of the Credit Period, pursuant to the Code §42(i)(1).

(7) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(8) Credit Period--With respect to a Housing Tax Credit building, the period of ten (10) taxable years, beginning with the taxable year the building is placed in service or at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code §42(f)(1).

(9) Department--The Texas Department of Housing and Community Affairs, an official and public agency of the State of Texas pursuant to Chapter 2306, Texas Government Code.

(10) Development--A property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the Depart-

ment and that is financed under the provisions of Chapter 2306, Texas Government Code.

(11) Extended Use Period--With respect to a Housing Tax Credit building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement, or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(12) Historically Underutilized Business (HUB)--Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(13) Housing Quality Standards--The property condition standards described in 24 CFR §982.401.

(14) HTC Development--Sometimes referred to as "HTC Property." A Development using Housing Tax Credits allocated by the Department.

(15) HUD--The United States Department of Housing and Urban Development.

(16) HUD-regulated Building--The rents and utility allowances of the building are reviewed by HUD on an annual basis.

(17) Low Income Unit--A Unit that is intended for occupancy by an income eligible household, as defined by the Department or the Code.

(18) Land Use Restriction Agreement or LURA--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of Chapter 2306 of the Texas Government Code, the Code, and the requirements of the various programs administered or funded by the Department.

(19) Material Noncompliance--

(A) A Housing Tax Credit Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the Material Noncompliance provisions, methodology, and point system of this title.

(B) Non HTC Developments monitored by the Department with 1 to 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non HTC Developments monitored by the Department with 51 to 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 50 points. Non HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 80 points.

(C) For all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.121 of this chapter to be Material Noncompliance.

(20) Non HTC Development--Sometimes referred to as Non HTC Property. Any Development not utilizing Housing Tax Credits.

(21) Owner--An individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization or cooperative that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing Development, subject to the regulatory powers of the Department and other terms and conditions.

(22) Substantial Construction--

(A) The minimum activity necessary to meet the requirements of substantial construction for new construction Developments will be defined as:

(i) Delivery of an executed partnership agreement with the investor;

(ii) Delivery of the executed construction loan and construction loan agreement;

(iii) completion of the foundation of the clubhouse (if applicable);

(iv) having all permits;

(v) all grading completed (not including landscaping);

(vi) all necessary utilities available at the property; and

(vii) all Right of Way access and one of the following:

(I) 20 percent of the construction contract amount for the development expended, adjusted for any change orders and certified by the inspecting architect; or

(II) 100 percent of the foundations in place and 50 percent of the framing completed; or

(III) 25 percent of all residential buildings roofed.

(B) The minimum activity necessary to meet the requirement of Commencement of Substantial Construction for rehabilitation Developments will be defined as having:

(i) building permits issued or a clearance from the City stating that building permits are not required;

(ii) a certification that there are no reasonably foreseeable issues or circumstances which may prevent or delay the start and progress of construction or the timely successful completion of rehabilitation; and

(iii) at least 20 percent of the construction budget expended as documented by the inspecting architect.

(23) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(24) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. *Example 102(1):* A two bedroom one bath Unit is considered a different Unit Type than a two bedroom two bath Unit. A three bedroom two bath Unit with 1,000 square feet is considered a different Unit Type than a three bedroom two bath Unit with 1,200 square feet. A one bedroom one bath Unit with 700 square feet will be considered equivalent to a one bedroom, one bath Unit with 800 square feet.

(25) UPCS--Uniform Physical Condition Standards as developed by the Real Estate Assessment Center of the Department of Housing and Urban Development.

§60.103. Construction Monitoring.

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that the initial compliance review was correct.

(b) The Department will not provide any funding to any Development unless the Owner certifies that the housing Development is, or will be upon completion of construction, in compliance with the following housing laws:

(1) state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601, et seq.), and the Fair Housing Amendments of 1988 (42 U.S.C. §§3601, et seq.);

(2) the Civil Rights Act of 1964 (42 U.S.C. §§2000a, et seq.);

(3) the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101, et seq.); and

(4) Section 504, Rehabilitation Act of 1973 (29 U.S.C. §§701, et seq.). (§2306.257)

(c) Evidence of Commencement of Substantial Construction must be submitted no later than the deadline established in the Development's Commitment Notice. Four percent BOND properties are not required to submit evidence of Substantial Construction.

(d) Copies of any construction reports supplied to a syndicator must be supplied to the Department upon request.

(e) Copies of any reports issued during construction that indicate changes that affect the representations made during the Application process must be supplied to the Department upon request.

(f) Owners are required to submit evidence of construction completion within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws.

(g) The Department will conduct a final inspection after receipt of notification of construction completion. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable laws referenced in subsection (b) of this section. In addition, a UPCS inspection may be completed.

(h) Owners will be provided a written notice after the final inspection. If any deficiencies are noted, a ninety (90) day corrective action period will be provided.

(i) Forms 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

(j) During any construction inspection, if the Owner and the Department are unable to agree that an identified issue is a violation, the Owner must request Alternative Dispute Resolution. The process for engaging ADR is outlined in §60.123 of this chapter.

§60.107. Notices to the Department.

(a) If any of the events in paragraphs (1) - (3) of this subsection occur, written notice must be provided to the Department within the timeframes as follows:

(1) Any sale, transfer, exchange, of the Development or any portion of the Development. Notification must be provided at least thirty (30) days prior to this event.

(2) The Development suffers in whole or in part a casualty loss. Notification must be provided within thirty (30) days following the event of loss using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster).

(3) Owners of Bond Developments shall notify the Department of the date 10 percent of the Units are occupied and the date 50 percent of the Units are occupied within ninety (90) days of such dates.

(b) Owners are responsible for maintaining current information (including contact persons, physical addresses, mailing addresses, email addresses, and phone numbers) for the Ownership entity and management company in the Department's Compliance Monitoring and Tracking System (CMTS). Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely on the information supplied by the Owner in CMTS to meet this requirement.

§60.108. Determination, Documentation and Certification of Annual Income.

(a) For all programs administered by the Department, annual income shall be determined consistent with the Section 8 Program, using the definitions of annual income described in HUD Handbook 4350.3 as amended from time to time. At the time of program designation as a low income household, owners must certify and document household income. In general, all low income households must be certified prior to move in.

(b) The Department permits Owners to use check stubs or other documentation of income and assets provided by the applicant or household in lieu of employment verification forms. It is not necessary to first attempt to obtain an employment verification form as required by the HUD 4350.3.

(c) The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted.

§60.111. Income at Recertification (Housing Tax Credit Properties).

(a) Under the Code, HTC Development Owners elect a minimum set aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limits or 40 percent of the Units restricted to the 60 percent income and rent limits). The minimum set aside elected by the Development Owner sets the maximum income and rent limits at the property. The Housing Tax Credit program requires mixed income properties to comply with the Available Unit Rule. Regardless of this section if a household's income exceeds 140 percent of the income limit elected by the minimum set aside, owners must comply with the Available Unit Rule. Many HTC Development Owners agreed to lease Units to households with an annual income and rent lower than the maximum limits (for example at the 30 percent, 40 percent or 50 percent income and rent limits) established by the minimum set aside election of the Owner. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's Land Use Restriction Agreement. When monitoring, the Department will examine the actual rent and income levels of all tenants to determine if additional rent and income requirements in the LURA are being met. Household income at recertification for the additional occupancy restrictions will be monitored as follows:

(1) Households initially designated at the 30 percent income and rent limits. If upon recertification, the household's income

exceeds the 30 percent limit, the Unit will continue to meet the 30 percent set aside requirement provided that the Owner does not charge rent in excess of the 30 percent rent limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 30 percent limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(2) Households initially designated at the 40 percent income and rent limits. If upon recertification, the household's income exceeds the 40 percent limit, the Unit will continue to meet the 40 percent set aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance, provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 40 percent limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(3) Households initially designated at the 50 percent income and rent limits (for HTC properties with the 40/60 minimum set aside). If upon recertification, the household's income exceeds the 50 percent income limit, the Unit will continue to meet the 50 percent set aside provided that the Owner does not charge rent in excess of the 50 percent rent limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 50 percent limits. Once the household has been replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(b) This section does not apply to households designated at the maximum income and rent limits required by the Code. Nor does this section in any way require a Development to lease more Units under the additional occupancy restrictions than established in the LURA.

(c) For those properties that are not required to perform recertifications, households will maintain the designation they had at move in. Owners must ensure that lower rent restrictions are adhered to throughout the household's occupancy.

(d) Preservation, HTF, HOME and BOND Developments, with any market units in one or more buildings (as evidenced in their LURA) must continue to perform annual recertifications of all households residing in program units. Owners of 100 percent low income Developments are not required to perform annual income recertifications. HTC Owners must perform annual income recertifications if the project has any market rate units. For HTC Developments, the election made on Part II of the 8609 will determine if a building is part of a project. HTC Development Owners must submit Forms 8609 with Part II completed. The Department may also require HTC Owners to complete Form 8821 to permit the Department to confirm the elections with the IRS.

(e) For HTC, Preservation, HTF, and/or BOND Developments in which the LURA requires 100 percent of the units to be leased to income eligible families, the following recertification requirements apply:

(1) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self-certification

form from each household that reports the number of household members, the age of each household member, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. In addition, the self certification will collect information about student status to establish ongoing compliance under the HTC and BOND programs. The Development must use the Department's Annual Eligibility Certification to collect this information and must maintain the certification in all household files.

(2) On 100 percent low income Housing Tax Credit developments, households may transfer to any unit within the same project (as determined on Part II of the 8609 for HTC Developments). On mixed income Housing Tax Credit Developments, households may transfer to any unit within the Development if as of their most recent (re) certification, their income was less than 140 percent of the maximum allowable limit. If the owner of a Housing Tax Credit development elected to treat each building as a separate project, households must be certified and low income to transfer to another building.

(3) Owners must review the Annual Eligibility Certification for the following items which would require further action:

(A) Changes in household composition. If members are added to an existing household, Owners must determine eligibility and complete a certification. The new household must be screened for income, assets, and student status and the existing Income Certification form must be updated. Owners must obtain first hand or third party verification of income and assets.

(i) If the Development becomes aware of the additions to households during the year, this action must be taken at the time the new household member moves in; Owners may not wait until the Annual Eligibility Certification is completed to take action. The Unit Status Report must be updated to reflect current circumstances as the property becomes aware of changes in household size.

(ii) If all original tenants have vacated the unit, the remaining tenants must be certified as a new income-qualified household unless the tenants were income qualified at the time of move in. HTC Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(B) Student status. Developments must use a lease addendum (or incorporate into their lease) a requirement for households to report changes in student status. If at any time the household reports a change in student status or discloses a change on the Annual Eligibility Certification form, the Owner must determine if the household is still eligible under the program. If the household meets one of the exceptions, documentation supporting eligibility must be gathered and retained in the lease file. Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(4) Failure to complete the Annual Eligibility Certification and maintain the form in household files will result in an issue of non-compliance that will be scored as shown in Figure: 10 TAC §60.121(l) under "Failure to maintain or provide Annual Eligibility Certification". No Form(s) 8823 will be filed with the IRS for the noncompliance.

(5) If a 100 percent low income Development continues to complete full recertifications, the Annual Eligibility Certification form must still be completed and the Unit Status Report must be updated at the completion of the recertification. The Department will not review the recertification paperwork during monitoring visits unless noncompliance is identified with the initial certification.

(f) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.252 and §92.203 of the HOME Final Rule, the following recertification requirements apply:

(1) Once every calendar year, the Development must collect a self-certification form from each household that reports the household's income, number and ages of household members, student status, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. The Development must use the Department's Income Certification form to collect this information and must maintain the certification in all household files. Failure to complete the Income Certification and maintain the form in household files will result in an issue of noncompliance that will be scored as shown in Figure: 10 TAC §60.121(l) under "Failure to maintain or provide Annual Eligibility Certification".

(2) HOME Developments must also complete full recertifications of each HOME Unit in every sixth year of the Development's Affordability Period. *Example 111.1:* A HOME property with an affordability period beginning in 2010 must perform full recertifications of all HOME households in 2015. All households must be re-certified, even households that moved in during 2014. Full recertifications at any other time are not required unless, the household self reports an annual income in excess of the 80 percent Area Median Income or as stated in 24 CFR §92.252, there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income or the property has otherwise been directed to institute full recertifications by the Department.

§60.116. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) Housing Tax Credit Development Owners are required by Treasury Regulation 1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department will evaluate UPCS reports in the following manner:

(1) A finding of Major Violations will be cited if:

(A) life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the Uniform Physical Condition Standards for the Development;

(B) 20 percent of the violations noted are level three deficiencies other than level three deficiencies reported on the Notification of Exigent and Fire Safety Hazards Observed form and corrected in the seventy-two (72) hour limit; or

(C) an overall UPCS score of less than 60 percent (59 percent or below) is reported.

(2) A finding of Pattern of Minor Violations will be assessed if:

(A) 20 percent of the violations noted are level two deficiencies; or

(B) An overall score between 60 percent and 79 percent is reported.

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) The Department is required to report to the Internal Revenue Service on Form 8823 any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses). Accordingly, the Department will submit Form(s) 8823 for any UPCS violation. However, if the violation(s) do not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non HTC properties that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) in this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of repair within the ninety (90) day corrective action period.

(e) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards (examples of such documentation includes work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the Uniform Physical Condition Standards. The Department will grant up to an additional ninety (90) day extension if there is good cause and the Owner clearly requests an extension.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and Housing Quality Standards (24 CFR §982.401). To meet this requirement, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. The Department will review HQS inspection sheets for all units for compliance with this requirement during onsite monitoring visits.

(h) Selection of units for inspection:

(1) Vacant units will not be inspected (alternate units will be selected) if a unit has been vacant for fewer than thirty (30) days.

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

§60.118. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, such as utilities paid to the owner, cannot exceed the maximum applicable limit (as determined by the minimum set aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set aside, the De-

partment will report the violation as corrected on the date that the rent plus the utility allowance, plus fees, is less than the applicable limit. The refunding of overcharged rent does not avoid the disallowance of the credit by the Internal Revenue Service.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 118(1)*: For Internal Revenue Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add \$5.50 to their other out of pocket costs for processing an application without providing documentation. Should an Owner desire to include a higher amount to cover staff time, wage information and a time study must be supplied to the Department upon request. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Form(s) 8823. The noncompliance will be corrected on the later of January 1st of the next year or as of the date the application fee is reduced and evidence of a reduced application fee is supplied to the Department. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year or until the application fee is reduced.

(d) Rent or Utility Allowance Violations on Non Housing Tax Credit properties. If it is determined that the property collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for a four (4) year period, until all funds are claimed, or for four (4) years. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME properties. 24 CFR §92.252 of the HOME Final Rule requires Owners to charge households with an income in excess of 80 percent at recertification, a rent equal to the lesser of 30 percent of the household's adjusted income or the market rent for comparable unassisted Units in the neighborhood. If at re-

certification the household self certifies an income in excess of the 80 percent limit, documentation of all income, assets and allowable deductions must be obtained by the owner. The Department will find a HOME property in noncompliance with this section if the Owner fails to determine the over income household's adjusted income and maintain documentation of market rents for comparable unassisted Units in the neighborhood.

(g) Special conditions for CDBG properties. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 307. INSPECTIONS OF HOMES IN AREAS WITHOUT MUNICIPAL INSPECTIONS

10 TAC §307.3

The Texas Residential Construction Commission (commission) adopts the amendment made to 10 TAC §307.3, concerning qualified fee inspectors, with minor grammatical changes to the proposed text as published in the December 26, 2008, issue of the *Texas Register* (33 TexReg 10395). Due to relationships of consanguinity (kinship), affinity (marriage), and business affiliations, a builder/remodeler's interests may be adverse to or in conflict with a fee inspector's professional responsibility to conduct a thorough inspection of residential construction and review of construction practices.

In accordance with Property Code §446.004 and §307.3, fee inspectors may include a professional engineer licensed by the Texas Board of Engineering, an architect registered with the Texas Board of Architectural Examiners, a professional inspector licensed by the Texas Real Estate Commission, or a third-party inspector registered with the commission. To varying degrees, these professionals are required to maintain certain levels of ethical business practice and to make known to their clients conflicts or potential conflicts of interest.

The adopted amendment to §307.3 does not lessen the ethical consideration or professional standards required by 22 TAC Chapter 137 applicable to licensed engineers, by 22 TAC §1.145 applicable to registered architects, or by 22 TAC §535.220 applicable to licensed real estate inspectors. Instead, when conducting residential construction inspections as a fee inspector,

these professionals are still held to their required professional standards.

The adopted amendment establishes whether a relationship creates a conflict of interest. The adopted amendment eliminates from eligibility as a fee inspector those persons who reside in the same household as the builder/remodeler or builder/remodeler's spouse, are related to the builder/remodeler or builder/remodeler's spouse within the fourth degree by consanguinity or affinity, or who have a fiduciary or ownership interest in each other's businesses or their spouse's business. The adopted amendment establishes the framework for determining conflicts of interest due to relationships of consanguinity, affinity, and affiliate businesses. However, the adopted amendment is not exhaustive and obligates the builder/remodeler and inspector to determine whether factors other than those expressly enumerated in the proposed amendment or whether any additional relationship creates a conflict of interest or the appearance of impropriety.

The adopted amendment will aid the commission in administration of the fee inspection program. The adopted amendment will promote inspections conducted by an unbiased inspector and will cultivate stakeholders' confidence in the residential dwelling inspection outcome. It is in the public interest that fee inspectors conduct an inspection upon which the builder/remodeler and homeowner may rely. The adopted amendment advances this public interest by requiring the builder/remodeler to fulfill his obligations under Chapter 307 using a fee inspector who has no conflict of interest with the builder/remodeler of the home. Most builder/remodelers already recognize that it is in their interest, in the interest of the homeowner, and in the public interest that the inspections required under Chapter 307 be conducted by a fee inspector without a conflict of interest. Most fee inspectors also recognize that, to remain in good standing as a professional, it is necessary to conduct business in a manner that is above reproach.

The adopted amendment implements new legislation enacted during the 80th Legislative Session, Regular Session, House Bill 1038 (Act effective September 1, 2008, 80th Legislature, Regular Session), which includes changes to Title 16, Property Code. More specifically, the amendment is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code and under chapter 446 of the Property Code, which requires inspection of residential construction that is located in unincorporated areas and areas not otherwise subject to municipal inspections.

The commission received no comments on the proposed amendment.

The rule amendment is adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code; Property Code §446.001, which gives the commission the authority to inspect homes in unincorporated areas; the commission's enabling act; and the Administrative Procedures Act, Texas Government Code, Chapter 2001.

No other statutes, articles, or codes are affected by the proposed rule amendment.

§307.3. Qualified Fee Inspectors.

(a) To serve as a fee inspector under this chapter, an individual must be one of the following:

- (1) a professional engineer licensed by the Texas Board of Engineering;
- (2) an architect registered with the Texas Board of Architectural Examiners;
- (3) a professional inspector licensed by the Texas Real Estate Commission; or
- (4) a third-party inspector registered with the commission under Chapter 303, Subchapter C of this title.

(b) The license or registration issued by one of the state governmental bodies listed in subsection (a) of this section must be in an active status of good standing with the issuing body at the time of hire, for the individual to be eligible to serve as a fee inspector under this chapter.

(c) A builder/remodeler may not engage a fee inspector if:

(1) the fee inspector or fee inspector's spouse is related to the builder/remodeler or the builder/remodeler's spouse within the fourth degree of consanguinity or affinity, as determined by the following chart:

Figure: 10 TAC §307.3(c)(1)

(2) the builder/remodeler or builder/remodeler's spouse resides in the same household as the fee inspector or fee inspector's spouse;

(3) the builder/remodeler or builder/remodeler's spouse, directly or indirectly, owns or controls any interest ownership in the business or businesses of the fee inspector or fee inspector's spouse;

(4) the fee inspector or fee inspector's spouse, directly or indirectly, owns or controls any interest ownership in the business or businesses of the builder/remodeler's spouse;

(5) the builder/remodeler or builder/remodeler's spouse is a director or office holder of any business of the fee inspector or fee inspector's business;

(6) the fee inspector or fee inspector's spouse is a director or office holder of any business of the builder/remodeler or builder/remodeler's spouse;

(7) if there is any reciprocity of services between the builder/remodeler, builder/remodeler's spouse, fee inspector, or fee inspector's spouse; or

(8) there is a relationship between the builder/remodeler, builder/remodeler's spouse, fee inspector, or fee inspector's spouse, directly or indirectly, that creates any conflict of interest or the appearance of impropriety.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Durso

General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 463-3926



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 27. PROCEDURE

The Texas Historical Commission (hereinafter referred to as the Commission) adopts the repeal of 13 TAC Chapter 27, §§27.1 - 27.8, 27.21, 27.22, 27.31, 27.33, 27.35, 27.37, 27.51, 27.53, 27.55, 27.57, 27.59, 27.61, 27.63, 27.65, 27.67, 27.69, 27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.95, 27.111, 27.113, 27.121, 27.123, 27.125, 27.127, 27.129, 27.141, 27.143, 27.145, 27.147, 27.149, 27.151, 27.153, 27.155, 27.157, 27.159, 27.161, 27.163, 27.165, 27.181, 27.183, 27.185, 27.187, 27.189, 27.191, 27.201, 27.203, 27.205, 27.207, 27.221, 27.223, 27.225, 27.227, 27.241, and 27.242, concerning to Procedure, without changes to the proposal as published in the December 5, 2008, issue of the *Texas Register* (33 TexReg 9842).

The repeal of these sections is adopted because these rules are substantively outdated and they have been superseded by rules adopted by the State Office of Administrative Hearings.

No public comments were received regarding adoption of this repeal.

SUBCHAPTER A. DEFINITIONS AND GENERAL

13 TAC §§27.1 - 27.8

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200900508

F. Lawrence Oaks

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-1858



SUBCHAPTER B. ADJUDICATIVE PROCEDURES

DIVISION 1. GENERAL

13 TAC §27.21, §27.22

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to

promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. PARTICIPANTS

13 TAC §§27.31, 27.33, 27.35, 27.37

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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F. Lawrence Oaks

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DIVISION 3. PLEADINGS

13 TAC §§27.51, 27.53, 27.55, 27.57, 27.59, 27.61, 27.63, 27.65, 27.67, 27.69

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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F. Lawrence Oaks
Executive Director
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DIVISION 4. DOCKETING AND NOTICE

13 TAC §§27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.95

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. PREHEARING PROCEEDINGS

13 TAC §§27.111, 27.113

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 6. HEARINGS

13 TAC §§27.121, 27.123, 27.125, 27.127, 27.129

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to

promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 7. EVIDENCE

13 TAC §§27.141, 27.143, 27.145, 27.147, 27.149, 27.151, 27.153, 27.155, 27.157, 27.159, 27.161, 27.163, 27.165

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 8. PROPOSAL FOR DECISION; EXAMINER'S REPORT

13 TAC §§27.181, 27.183, 27.185, 27.187, 27.189, 27.191

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 9. ORDERS

13 TAC §§27.201, 27.203, 27.205, 27.207

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 10. ANCILLARY PROCEEDINGS AND PROCEEDINGS BEYOND ORDER

13 TAC §§27.221, 27.223, 27.225, 27.227

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PROCEEDINGS REGARDING PERMITS FOR SALVAGE, RESTORATION, OR STUDY

13 TAC §27.241, §27.242

The repeal is adopted under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Commission adopts amendments, in Subchapter A, to §8.1, relating to General Applicability and Standards, and, in Subchapter B, to §8.101, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines. The amendments to §8.1 are adopted with changes to the proposed version, and the amendments to §8.101 are adopted without changes to the proposed version. The proposals were published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8461).

The Commission adopts the amendments to update the adoption by reference of federal pipeline safety provisions and citations and to address the regulation of pipelines and some production facilities in populated areas.

The Commission received comments on the proposed amendments to §8.1 and §8.101 from nine entities. Five groups or associations submitted comments: Texas Pipeline Association ("TPA"); Texas Independent Producers and Royalty Owners ("TIPRO"); Texas Oil and Gas Association ("TxOGA"); Permian Basin Petroleum Association ("PBPA"); and Texas Coalition of Cities for Utility Issues ("TCCFUI"), whose member cities are Abernathy, Addison, Alamo, Allen, Andrews, Arlington, Balcones Heights, Belton, Benbrook, Big Spring, Bowie, Breckenridge, Brenham, Brookside Village, Brownfield, Brownwood, Buffalo, Canyon, Carrollton, Cedar Hill, Center, Cleburne, Conroe, Corinth, Corpus Christi, Cottonwood Shores, Crockett, Dallas, Denison, Denton, Dickinson, El Lago, Electra, Euless, Fairview, Flower Mound, Fort Worth Fredericksburg, Friendswood, Frisco, Galveston, Grand Prairie, Grapevine, Greenville, Gregory, Henrietta, Huntsville, Irving, La Grange, La Joya, Lampasas, Lancaster, Laredo, League City, Leon Valley, Levelland, Lewisville, Longview, Los Fresnos, Mansfield, McAllen, Midlothian, Missouri City, Newark, Nolanville, North

Richland Hills, Oak Point, Palacios, Pampa, Paris, Pearsall, Plainview, Plano, Port Neches, Ralls, Refugio, Reno, Richardson, River Oaks, Rosenberg, San Jacinto City, San Marcos, San Saba, Selma, Seminole, Seymour, Smithville, Snyder, South Padre Island, Spearman, Stephenville, Sugar Land, Sunset Valley, Sweeny, Taylor Lake Village, Terrell, Thompsons, Timpson, Trophy Club, Tyler, University Park, Vernon, Victoria, Waxahachie, Webster, West University Place, and Westlake. Other comments were submitted by CenterPoint Energy Arkla, CenterPoint Energy Entex and CenterPoint Energy Intrastate Pipeline, Inc. (collectively "CenterPoint"); Texas Gas Service ("TGS"); CPS Energy; and one individual.

TPA stated that it appreciates the Commission's efforts to clarify the issues identified last year.

TIPRO commented that it understands the purpose of the proposed changes is to implement new federal regulations governing persons owning or operating pipelines in Texas. By adopting the federal regulation by reference, rules covering pipeline safety in Texas would conform to federal requirements. These rules should be no more or no less stringent than the federal rules. TIPRO agrees with that effort, and with the Commission's authority to regulate all common carrier and common purchaser pipelines in Texas. TIPRO also acknowledged that the Commission has authority to regulate production facilities in Texas, including production and flow lines contained on the lease, but seeks clarification on several specific items contained in the rule proposal.

PBPA stated its full support of the comments provided by TxOGA regarding these proposed rule changes.

TCCFUI stated that, overall, the rules provide a positive revision to the Commission's pipeline safety rules. It is critical to the safety of the general public, and in particular the populations of urban areas, that the Commission continue to examine and amend its pipeline safety rules to put in place a regime that is comprehensive and consistent with federal law, yet efficient in its implementation. Given the increasing production of natural gas in densely populated areas, such as in the Barnett Shale, it is indeed imperative that the Commission update its pipeline safety rules to create orderly and effective mechanisms to handle penalties for violations, leak complaints, and odorization issues with respect to natural gas lines. Public awareness regarding natural gas pipelines is also an important component to pipeline safety, both through public education and public notice. TCCFUI stated that the proposed rules represent an excellent step in this direction.

CenterPoint stated its general support of the goal of updating the state rules to achieve consistency with their federal counterparts, and acknowledged that the Commission has both the right and a policy imperative to amplify upon the federal rules and enact stricter rules governing intrastate pipelines.

TGS stated its support of the efforts of the Commission to clarify the rules and increase safety within the industry. TGS supports the concepts contained in the proposed Chapter 8 rules.

CPS Energy agreed with a vast majority of the proposed Chapter 8 rule changes.

Regarding new subparagraph (B) in §8.1(a)(1), one commenter stated that the wording of this paragraph is confusing, because of how it references both gathering and production after the first point of measurement as the beginning of gathering per 49 CFR 192. If the first point of measurement coincides with the end-

point of production and beginning of gathering per 49 CFR 192, then lines after that point are gathering, not production. The end of production is determined by API RP-80 as incorporated by 49 CFR 192, not by the first point of measurement--unless the Commission's intent is to make the State's implementation of 49 CFR 192 more stringent than the revised 49 CFR 192 gas gathering rule. By stating that lines beyond the first point of measurement shall be subject to 49 CFR 192.8 and to the rules as defined as Type A or Type B gathering lines, the commenter assumes that this is simply the Commission implementing 49 CFR 192.8 to determine if a gathering line is a Type A or a Type B, and also if it is a regulated line based on population density.

TIPRO expressed concern with the inclusion of the word "production" in this section of the rule, and seeks clarification on the use of the phrase "and production" in this section of the rule. If the Commission intends to adopt the federal rules by reference and not expand the number or type of pipelines covered by the proposal, TIPRO agrees with the efforts. However, TIPRO believes the inclusion of "production" expands the scope of the federal rules. TIPRO seeks clarification to determine if that expansion is intended. TIPRO stated that it and others negotiated with the Office of Pipeline and Hazardous Material Safety Administration during the development of the federal pipeline safety regulations to ensure that the safety regulations only applied to pipelines downstream of the "first point of measurement." This agreement limits the application of these rules to most of the production and flow lines at production facilities. TIPRO believes that the Commission's efforts should recognize this agreement and the Commission should focus the safety rules to only those lines covered by the federal requirements found generally in 49 CFR Part 192 and specifically at 49 CFR Part 192.8.

TxOGA acknowledges the Commission's authority to regulate production facilities to protect the safety of the public. TxOGA therefore does not oppose appropriate Commission regulation of gas production facilities in populated areas. TxOGA offered alternative wording for this subparagraph, the only substantive change being to make gas production facilities in Class 2, 3, or 4 areas subject only to the regulations defined for Type B gas gathering lines. The remainder of the changes TxOGA suggests are simply clarifications; they are not intended to make any change to the scope of the facilities proposed by the Commission to become subject to safety regulation under its rules. In particular, the proposed deletion of the phrases "pipeline and gathering and" and "The gathering and" removes references to facilities other than production facilities and does not affect the Commission's regulation of gas pipelines (including gas gathering lines), as they are included in §8.1(a)(1)(A) which makes the Commission's regulation applicable to "all gas pipeline facilities and facilities used in the intrastate transportation of natural gas, including master metered systems, as provided in 49 United States Code (U.S.C.) §60101, *et seq.*; and Texas Utilities Code, §§121.001-121.507." Incorporation of the federal regulations by reference already makes gas gathering lines in Class 2, 3, or 4 areas subject to regulation as Type A or Type B gas gathering lines.

TxOGA's comments state that it was an active participant in the several federal rulemaking efforts that culminated in the adoption of new 49 CFR Part 192 ("Part 192") definitions of gas gathering and regulated gas gathering in March, 2006. The Association agrees that the current federal regulations, as explained by a U. S. Department of Transportation Pipeline and Hazardous Materials Safety Administration ("PHMSA") representative in a number of workshops held in various states during 2006 following the rule

adoption, reasonably reflect both the PHMSA and the oil and gas industry understanding as to which facilities should be regulated as pipeline facilities by the states. TxOGA understands that the applicability language in proposed §8.1(a)(1)(B) is intended to apply existing Commission authority to impose new public safety regulation upon certain production facilities and is not intended to suggest that these production facilities are "pipeline facilities" and thus subject to pipeline safety regulation.

TxOGA recognizes that the subset of federal gas gathering line safety regulations applicable to Type B gas gathering lines addresses the issues identified by PHMSA and the Commission as the primary causes of gas pipeline failures or other incidents. Application of the Type B regulations to gas production facilities in regulated areas means that all such facilities will have to apply the federal regulations for corrosion control (for metallic pipelines), for establishment of damage prevention and public education programs, for installation and maintenance of line markers, and for determination of maximum allowable operating pressure ("MAOP"). In addition, if a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection, and initial test must be in accordance with federal gas pipeline safety regulations. TxOGA agrees that these public safety protection regulations are appropriate for application to onshore gas production facilities in Class 2, 3, or 4 areas.

In its comments on the Commission's 2007 proposal, TxOGA did not object to the imposition of Type A gathering line regulations on certain higher pressure production operations. In making those comments, it was TxOGA's understanding--as reflected in its recommendation for a written definition of the "first point of measurement"--that gas production facility regulation would begin at "the point at which natural gas is measured, after the first point of separation, for the purpose of reporting monthly production to the Commission as required by §3.27(a), (b), and (e) (relating to Gas To Be Measured and Surface Commingling of Gas), but does not include prior measurement of gas vented, flared, or used on the lease or unit or to prior measurement for well testing or reservoir management purposes." TxOGA expected that there would be very few facilities to which Type A regulation would apply given this clarification of the starting point for production facility regulation.

TxOGA now understands the Commission's intent in the current proposal to be that the beginning of production regulation would begin much further upstream--at the point at which gas production is measured for any purpose. TxOGA does not object to this change, provided that regulation of production facilities is limited to the rules applicable to Type B gas gathering lines. Application of Type A gas gathering line regulations to production operations would unreasonably impose new regulatory requirements on operations for which such requirements could not have been foreseen and that were not designed to be regulated in that manner.

TxOGA pointed out that many producers have used new technology in their upstream operations, including new flow line and production line materials. An example is various brands of non-metallic composite piping, designed for applications which, in the past, would have required steel pipe. This piping is not only less expensive to install and maintain, it is corrosion-resistant by nature. The design specifications for these lines make them appropriate for this use, but published reference standards for these materials have not yet been incorporated in the federal pipeline safety regulations. Such a standard for at least one popular brand of composite pipe is reportedly nearing PHMSA accep-

tance, but other equally or even more appropriate materials are certain to be developed and need to be available for producers to use. Such "non-metallic" lines for which there is not an approved reference standard and for which the maximum allowable operating pressure ("MAOP") exceeds 125 psig will be classified as Type A lines under the Commission's proposed rule, unless the operators are able to obtain relief through a cumbersome, site-specific waiver process.

TxOGA stated that, generally, operators do not have the detailed records to establish the actual hoop stress that is the specified minimum yield strength ("SMYS") for existing steel production lines. Not only was there never any need for such records to be maintained in the past, many producers operate properties obtained from other producers (via purchase or trade), and any such records or institutional memory as to the design specifications of the pipe are no longer available. Because the destructive testing needed to accurately determine the actual yield strength is both expensive and time-consuming, producers must rely on the very conservative default yield strength value in the federal regulation as the value to plug into the hoop stress equation. This low "default" yield strength value is expected to cause some existing production lines--upstream of the first point of measurement previously recommended by TxOGA--to be artificially classified as Type A lines.

TxOGA commented that the nominal size of most of the line pipe used in production operations is in the two-inch to four-inch range (even though it can be as high as six-inches in a few instances). While the default yield strength may cause the MAOP to exceed 20% of the calculated SMYS for some of these lines, the pressures in such pipes in production operations will be well within acceptable safety tolerances (and most likely will actually be below 20% of the actual SMYS). There is little (if any) benefit to be derived from imposing Type A gas gathering regulation on these facilities.

TxOGA stated that gas gathering line operations tend to be more extensive in areal scope than production operations. Type A gathering line regulation includes comprehensive facility survey, re-testing, and record-keeping requirements. The Operator Qualification and Operations and Maintenance Manual requirements are especially onerous. The radically different economies of scale for the much smaller production operations would make the additional requirements of Type A regulation unduly burdensome for producers, particularly since no need for this additional level of regulation has been demonstrated. TxOGA does not believe that it is necessary or appropriate to apply the Type A gas gathering line regulations to production operations. The Commission is certainly not required to do so by any part of its agreement to administer the federal pipeline safety regulations, since this agreement does not apply to regulation of production operations. Application of the Type B gas gathering line regulations to production facilities will provide the public the necessary level of protection. These regulations can always be supplemented at a later date should the Commission deem necessary.

Finally, TxOGA presumes that any request for waiver of the construction standards applicable to MAOP determinations or to the construction of new, replaced, or relocated production facilities would be subject to the procedures of §8.125 (relating to Waiver Procedure), which states that an application for waiver of a pipeline safety rule is generally site-specific. Because of the various pipe materials, such as various brands and grades of non-metallic composite pipe, that are now in common use in

production operations but for which reference standards have not yet been adopted by PHMSA, it would be very desirable for an operator (or even the industry as a whole) to be able to get a blanket waiver for use of particular brands and grades of non-metallic pipe in specified (e.g., maximum pressure, temperature range, product, etc.) applications. TxOGA recommends that this be considered by the Commission in a future pipeline safety rulemaking.

In response to these comments regarding the wording of new subparagraph (B) in §8.1(a)(1), the Commission disagrees with suggestions and requests for clarification that would limit the scope of the Commission's safety regulatory authority to the limits in the federal rules. The Commission confirms its intent to include in its safety regulations those gathering and production lines beyond the first point of measurement. The Commission intends that its safety regulation be more comprehensive than the standard imposed under the federal rules. The Commission finds that applying the federal concepts, which are based on pipeline operating pressures and population densities, to these upstream facilities ensures that they will be regulated in a manner that is consistent with a risk-based approach. Generally speaking, historically, oil and gas exploration and production have taken place well away from densely populated areas. Now, however, as such operations are increasingly close to or in urban areas, it is consistent with the federal risk model that production and gathering lines be regulated, using a risk-based model, all along their lengths. The notion that regulation of production facilities should be limited to the rules applicable to Type B gas gathering lines because application of Type A gas gathering line regulations to production operations would unreasonably impose new regulatory requirements on operations for which such requirements could not have been foreseen and that were not designed to be regulated in that manner is inconsistent with information provided by the industry to the Commission, specifically, that such pipelines are already designed to meet national industry standards.

The Commission agrees that producers using new technology may need to secure site-specific waivers using the process set forth in §8.125. The Commission will address these on a case-by-case basis. In addition, there is agency precedent for securing a general waiver. In 1996, the Commission approved the petition of several intrastate pipelines for waivers from the standards of 49 C.F.R. §192.485 and §192.713(a) to allow use by the applicants of a proprietary composite reinforced (CR) sleeve material, the Clock Spring Wrap. The Commission recognizes that because standards have not yet been adopted by PHMSA for composite pipe materials, obtaining a waiver from the Commission would be an opportunity for the Texas pipeline industry to secure approval for the use of these materials.

With respect to proposed new subsection (g) in §8.1, which relates to compliance deadlines to establish the time by which operators must comply with pipeline safety requirements, TxOGA commended the Commission for its proposal of reasonable deadlines for newly regulated operators to come into compliance with its rules. The deadlines are generally consistent with those in the federal pipeline safety rules for newly regulated gas gathering line operators. TxOGA's only recommendation in regard to the wording of the proposal is to delete the proposed §8.1(g)(2)(F) references to other provisions applicable to Type A gathering lines. The Commission disagrees with this comment for the reasons set forth in foregoing paragraphs.

TxOGA also recommended that the Commission employ an aggressive education outreach to producers through Notices to Operators, publications (including Frequently Asked Questions), and several workshops for oil and gas producers. Many producers who have never operated "pipelines" and never been subject to the Commission's pipeline safety rules are likely to have overlooked this proposal and be unaware that the Commission is about to adopt public safety rules applicable to producers. The Commission agrees with this recommendation and will be utilizing all available opportunities to disseminate this information throughout the industry.

The Commission's proposal to exclude gathering lines from the requirements of §8.101(b), relating to the deadlines for integrity testing for natural gas and hazardous liquids pipelines, garnered comments in support. TPA supports this narrowing of the applicability of the Commission's pipeline integrity rule. This change will provide the greatest focus on the pipeline facilities most likely to pose the greatest risk. This change also brings the Commission's rule into alignment with the new federal approach on regulated gathering lines, which is being incorporated into the Commission's rules in this rulemaking. TxOGA supports the Commission's proposed changes to §8.101 to align the Commission's pipeline safety regulations with federal requirements, which will allow operators to focus their resources where there is the most benefit to the public in terms of public safety protection using a risk-based approach. TxOGA believes that recognizing the lower risks posed by gas gathering lines and focusing integrity management requirements on gas transmission and hazardous liquid pipelines is the correct and prudent approach. TxOGA requests that the Commission issue gathering line operators a blanket stay of enforcement for these Commission integrity management requirements pending adoption of this rule change. The Commission agrees with these comments, but declines to include any blanket declarations of enforcement because that is outside the scope of the rulemaking.

In §8.1(a)(1), the Commission adopts amendments to remove the word "natural" in subparagraph (A) and to add new subparagraph (B) to address onshore pipeline and gathering and production facilities in designated Class 2, Class 3, and Class 4 locations. In response to an earlier proposal, the Commission received comments concerning the removal of the word "natural" in subparagraph (A), which originally was proposed to clarify that LPG distribution systems are also regulated under the safety rules. The new proposal would add LPG distribution systems as a separate type of facility as was done with master meter operators in that same subparagraph.

In §8.1(b), the Commission adopts a change in the effective date from July 1, 2005, to August 25, 2008, to reflect a new date for the adoption by reference of federal pipeline safety statutes, and adds new wording in paragraphs (3) and (4) to add references to 49 CFR Part 40 and to another Commission rule, 16 TAC §3.70, relating to Pipeline Permits Required.

The Commission adopts the amendments in §8.1(b) to update the minimum safety standards and to adopt by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §§60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs; 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR

Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §§60101, *et seq.*; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing. The rule adopts the federal pipeline safety standards as of August 25, 2008. The federal safety rule amendments that are captured are summarized in the following paragraphs.

USDOT's Amendment No. 192-101(102) and 195-85(86), published at 70 Federal Register (FR) 61571, addressed current regulations governing integrity management of gas transmission lines where an operator using direct assessment to evaluate corrosion risks must carry out the direct assessment according to PHMSA standards. In response to a statutory directive, the final rule prescribes similar standards operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines. PHMSA stated that broader application of direct assessment standards will enhance public confidence in the use of direct assessment to assure pipeline safety. The final rule took effect November 25, 2005.

USDOT's Amendment No. 192-102, published at 71 FR 13289, adopted a consensus standard to distinguish onshore gathering lines from other gas pipelines and from production operations. In addition, it established safety rules for certain onshore gathering lines in rural areas and revised current rules for certain onshore gathering lines in non-rural areas. Operators will use a new risk-based approach to determine which onshore gathering lines are subject to PHMSA's gas pipeline safety rules and which of these rules the lines must meet. PHMSA intended the action to reduce disagreements over classifications of onshore gathering lines, increase public confidence in the safety of onshore gathering lines, and provide safety rules consistent with the risks of onshore gathering lines. The final rule took effect April 14, 2006.

Amendment Nos. 192-103, 193-19, and 195-86, published at 71 FR 33402, updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices, and took effect July 10, 2006.

Docket OST-2007-26828, published at 72 FR 1298, was an interim final rule regarding the National Highway Transportation Safety Administration's (NHTSA's) recently approved new breath tube alcohol screening device which will qualify for use in DOT agency-regulated testing once it appears on NHTSA's conforming products list. The interim final rule provides a procedure for use of the new device and removes procedures for a previously approved breath tube alcohol screening device which is no longer being manufactured. The interim final rule took effect January 11, 2007.

Amendment Nos. 192-103 and 195-86, published at 72 FR 4655, addressed PHMSA's amendment of a final rule published in the Federal Register on June 9, 2006, which updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. The final rule took effect March 5, 2007.

Docket No. PHMSA-2005-22642, published at 72 FR 20055, concerned a final rule requiring operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion. The design and

construction features required by the rule will reduce the risk of internal corrosion and related pipeline failures by reducing the potential for accumulation of liquids and facilitating operation and maintenance practices that address internal corrosion. The final rule took effect May 23, 2007.

Amendment Nos. 192-104 and 195-87, published at 72 FR 39012, modified the integrity management regulations for hazardous liquid and natural gas transmission pipelines. The modifications included adding an eight-month window to the period for reassessing hazardous liquid pipelines; modifying notification requirements for operators of hazardous liquid and natural gas pipelines; repealing a requirement for gas operators to notify local authorities; and allowing alternatives in calculating pressure reduction when making an immediate repair on a hazardous liquid pipeline. The action was intended to improve pipeline safety by clarifying the integrity management regulations and providing operators with increased flexibility in implementing their integrity management programs. The final rule was effective August 16, 2007.

Federal Register Docket No. 07-55511, published at 72 FR 54600, contained a correction in the heading in 49 CFR Part §40.209. In PHMSA Docket 2003-15852, published at 72 FR 70808, the rules for public awareness were relaxed for master meter operators and operators of small LPG distribution systems, effective January 14, 2008. These operators typically manage property and incidentally provide gas service to customers located on the property. The change provided a less burdensome means for the operators to comply with the public education and awareness programs.

Docket No. PHMSA-2007-0033, published at 73 FR 16562, conformed PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) by establishing the procedures PHMSA will follow in issuing safety orders and handling requests for special permits, including emergency special permits. The interim final rule also notified operators about electronic docket information availability; updated addresses, telephone numbers, and routing symbols; and clarified the time period for processing requests for written interpretations of the regulations. The interim final rule did not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators. The interim final rule was effective April 28, 2008.

Docket OST-2008-0184, published at 73 FR 33735, amended the drug and alcohol testing procedures to authorize employers to disclose to State commercial driver licensing (CDL) authorities the drug and alcohol violations of employees who hold CDLs and operate commercial motor vehicles (CMVs), when a State law requires such reporting. The rule also permitted third-party administrators (TPAs) to provide the same information to State CDL licensing authorities where State law requires the TPAs to do so for owner-operator CMV drivers with CDLs. The interim final rule was effective June 13, 2008.

Docket ID PHMSA-RSPA-2003-15875, published a 73 FR 31634, amended the pipeline safety regulations to extend added protection to certain environmentally sensitive areas that could be damaged by failure of a rural onshore hazardous liquid gathering line or low-stress pipeline. Building on PHMSA's existing regulatory framework, the rule was intended to protect designated "unusually sensitive areas" (USAs), which are locations requiring extra protection because of the presence of sole-source drinking water, endangered species, or other ecological resources. The rule defined "regulated rural onshore

hazardous liquid gathering lines" and required operators of these lines to comply with safety requirements that address the most common threats to the integrity of these pipelines: corrosion and third-party damage. In accordance with the PIPES Act of 2006, the rule also significantly narrowed the regulatory exception for rural onshore low-stress hazardous liquid pipelines by extending all existing safety regulations, including integrity management requirements, to large-diameter low-stress pipelines within a defined "buffer" area around a USA. The final rule required operators of these, and all other low-stress pipelines, to comply with annual reporting requirements, furnishing data needed for further rulemaking required by the PIPES Act. The final rule was effective July 3, 2008.

Docket No. OST-2003-15245, published at 73 FR 35961, amends certain provisions of USDOT's drug and alcohol testing procedures to change instructions to collectors, laboratories, medical review officers, and employers regarding adulterated, substituted, diluted, and invalid urine specimen results. These changes are intended to create consistency with specimen validity requirements established by the U.S. Department of Health and Human Services, and to clarify and integrate some measures taken in two interim final rules. The final rule makes specimen validity testing mandatory within the regulated transportation industries. The final rule was effective August 25, 2008.

The Commission adopts new §8.1(g) relating to compliance deadlines to establish the time by which operators must comply with pipeline safety requirements. One purpose of the new subsection is to clarify that operators of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed must ensure compliance with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service. However, the main purpose of the new subsection, as proposed in paragraph (2), is to assist those operators whose pipeline or pipeline facilities have become newly subject to regulation as a result of the changed definition in 49 CFR Part 192 by stating clearly the deadline by which their facilities must be in compliance with the various requirements of 49 CFR Part 192. An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and §8.1(a)(1)(B) must comply with the applicable requirements no later than the stated date, which is the period of time that was specified in the proposed rule. Different deadlines are specified to allow operators enough time to comply with the new requirements, based on the type of changes they would need to make to ensure compliance. As stated in the proposal preamble, the Commission adopts §8.1(g)(2)(A) - (F) with amended wording to substitute dates certain for the compliance deadlines instead of stating them as a particular number of months or years from the effective date of the rule.

In §8.101(b), the Commission removes the word "gathering" from the description of intrastate transmission lines and from the title of Table 1 in subsection (b)(2).

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines

and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 United States Code Annotated, §§60101, *et seq.*; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211, 121.251, 121.252, and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211, 121.251, 121.252, and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on February 10, 2009.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of gas, including LPG distribution systems and master metered systems, as provided in 49 United States Code (U.S.C.) §60101, *et seq.*; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore pipeline and gathering and production facilities, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line. The gathering and production beyond this first point of measurement shall be subject to 49 CFR Part 192.8 and shall be subject to the rules as defined as Type A or Type B gathering lines as those Class 2, 3, or 4 areas as defined by 49 CFR Part 192.5;

(C) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §60101, *et seq.*; and Texas Natural Resources Code, §§117.011 and §117.012; and

(D) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.

(2) The regulations do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §§717, *et seq.*; or 49 U.S.C. §§60101, *et seq.*

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective August 25, 2008.

(1) Natural gas pipelines, including LPG distribution systems and master metered systems, shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) Hazardous liquids or carbon dioxide pipelines shall comply with 49 U.S.C. §§60101, *et seq.*; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline.

(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities, other than master metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline Permits Required).

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49 U.S.C. §§60101, *et seq.* the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Concurrent filing. A person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall file a copy of that document or information with the Safety Division.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051 - 117.054, and/or Texas Utilities Code, §§121.206 - 121.210, and the Commission may dismiss with prejudice

to refiling an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

(g) Compliance deadlines. Operators shall comply with the applicable requirements of this section according to the following guidelines.

(1) Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed shall comply with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service.

(2) An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1)(B) of this section shall comply with the applicable requirements of this section no later than the stated date:

(A) for cathodic protection (49 CFR Part 192), March 1, 2012;

(B) for damage prevention (49 CFR 192.614), September 1, 2010;

(C) to establish an MAOP (49 CFR 192.619), March 1, 2010;

(D) for line markers (49 CFR 192.707), March 1, 2011;

(E) for public education and liaison (49 CFR 192.616), March 1, 2011; and

(F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(c)), March 1, 2011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200900539

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

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Proposal publication date: October 10, 2008

For further information, please call: (512) 475-1295



SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §8.101

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and

their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 United States Code Annotated, §§60101, *et seq.*; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211, 121.251, 121.252, and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211, 121.251, 121.252, and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on February 10, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Managing Director

Railroad Commission of Texas

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES

19 TAC §5.51

The Texas Higher Education Coordinating Board adopts new §5.51 concerning the publication of doctoral program data by public universities and health-related institutions without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8857). This new section will require public institutions with doctoral programs to publish on their web sites certain data relating to those doctoral programs, and to use that data as part of institutional evaluation and quality improvement procedures.

No comments were received regarding this new section.

The new section is adopted under the Texas Education Code, Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.3 - 7.9, 7.15, 7.17

The Texas Higher Education Coordinating Board adopts amendments to §§7.3 - 7.9, 7.15 and 7.17 concerning General Provisions with changes to §§7.3 - 7.5 and 7.8 of the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8858). Sections 7.6, 7.7, 7.9, 7.15 and 7.17 are being adopted without changes and will not be republished.

Section 7.3(29) is adopted with change to further clarify the rule; and changes to §7.4(a) and §7.8(5) are to correct grammatical errors.

Specifically, the new language to §7.4(g), Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas reflects a change in the process regarding those institutions that offer only religious degrees. Rather than the institution requesting a Certificate of Authorization, the institution may request a letter stating that the Board does not have oversight over it as long as the institution offers only religious degrees. Section 7.5(14)(B), Standards of Operation of Institutions relating to curriculum is revised to remove the maximum number of hours for a baccalaureate degree. The section incorrectly identified 139 semester credit hours or 180 quarter credit hours as the maximum. However, until recently, this maximum only applied to undergraduate degree programs leading to Texas teacher certification and should not be applied to all baccalaureate degrees. Section 7.6(b)(4), Recognition of Accrediting Agencies clarifies the process to be followed by an accrediting agency if it loses or voluntarily relinquishes its recognition. It directs the accrediting agency to provide official notification to the Texas institutions that it accredits and to the Board, that the accrediting agency no longer is recognized in the State of Texas. Subsequently, the institutions have 30 days to contact the Board as to whether or not they plan to apply for a Certificate of Authority with the Texas Higher Education Coordinating Board, seek another accrediting agency's approval, or relinquish their degree granting authority. Sections 7.7(g)(5), 7.8(3) and 7.9(c)(3)(G) clarify the requirement that an institution must submit a certificate of approval or a letter of exemption from the Texas Workforce Commission as part of the application for a Certificate of Authority. Other minor changes that clarify language are incorporated throughout the chapter.

No comments were received concerning the amendments.

The amendments are adopted under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

§7.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic associate degree program--A grouping of courses designed to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts and the associate of science degrees.

(2) Accreditation--The status of public recognition that a recognized accrediting agency grants to an educational institution.

(3) Accrediting agency--A legal entity that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions.

(4) Agent--A person employed by or representing a post-secondary educational institution in an official capacity within or without Texas who:

(A) solicits any Texas student for enrollment in the institution;

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) Alternative Certificate of Authority--A type of certificate of authority for approval of postsecondary institutions, with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.

(6) Applied associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts and the associate of applied science degrees.

(7) Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, the associate of science, the associate of applied arts and the associate of applied science.

(8) Board--The Texas Higher Education Coordinating Board.

(9) Board staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.

(10) Branch campus, extension center, or other off-campus unit--Any institution or part of an institution offering or proposing to offer away from the home campus more than occasional courses or courses leading to the granting of a degree without the necessity for courses to be taken at the main campus.

(11) Career school or college--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by Texas Education Code §132.002 or §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas), and:

(A) That offers or maintains a course or courses of instruction or study; or

(B) At which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

(12) Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.

(13) Certificate of authority--The Board's approval of post-secondary institutions, (other than exempt institutions) with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.

(14) Certificate of authorization--The Board's acknowledgment that an institution is qualified for an exemption from the regulations herein.

(15) Change of ownership or control--Any change in ownership or control of a career school or college or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college is considered to have changed:

(i) In the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) In the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(16) Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(17) Classification of Instructional Programs (CIP) Code--The four (4)- or six (6)-digit code assigned to an approved degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(18) Commissioner--The Commissioner of Higher Education.

(19) Concurrent Instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(20) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(21) Educational or training establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(22) Exempt institution--An institution operating in Texas that is accredited by an agency recognized by the Board under §7.2 of this chapter (relating to Authority) or a career school or college that applies for and is declared exempt under this chapter, by the Texas Workforce Commission as described in Texas Education Code, §61.003(8), or Texas Education Code Chapter 132, respectively. Exempt institutions may still have to comply with certain Board rules.

(23) Fictitious degree--A counterfeit or forged degree or a degree that has been revoked.

(24) Fraudulent or substandard degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this chapter;

(B) not eligible to receive a certificate of authority under this chapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.14 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a certificate of authority under this chapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.14 of this chapter, determines is not the equivalent of an accredited or authorized degree.

(25) Home campus--The headquarters of an institution, such location to be determined as a matter of fact by the Commissioner based upon consideration of information such as, but not limited to the following:

(A) where the institution is chartered;

(B) the site, campus or city where the principal or chief executive's offices are located;

(C) the site, campus or city where the institution conducts the preponderance of its instructional activities; and

(D) any other pertinent and material facts.

(26) Occasional courses--Courses offered not more than twice at any given location in the state.

(27) Out-of-state public postsecondary institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(28) Person--Any individual, firm, partnership, association, corporation, enterprise, or other private entity or any combination thereof.

(29) Postsecondary educational institution--An educational institution which furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(30) Private Postsecondary Educational Institution--An institution which:

(A) is not an institution of higher education as defined by Texas Education Code §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has a representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

(31) Program or Program of study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(32) Protected term--The term "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

(33) Recognized accrediting agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(34) Representative--A person who acts on behalf of an institution regulated under this chapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(35) Required state or national licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

§7.4. Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas.

(a) An institution must request and be granted a certificate of authority, an alternative certificate of authority, or a certificate of authorization by the Commissioner before it can offer to award degrees or courses leading to degrees. The Commissioner may issue a certificate of authorization to grant degrees to an institution, upon the institution's request and demonstration that it qualifies for an exemption under this subsection. The exemptions provided by this subsection apply only to the degree level for which the programs or the institution is accredited or approved, as applicable, and if an institution offers to award a degree at a level for which it is not accredited or approved by the appropriate agency of the State of Texas, the exemption does not apply. Upon issuance of a certificate of authorization as an exempt institution, the provisions of this chapter, with the exception of §§7.15 - 7.17 of this chapter do not apply to following types of postsecondary institutions:

(1) Schools or colleges that do not award degrees or offer courses leading to degrees. However, such institutions are subject to the rules of the Texas Workforce Commission Pursuant to Chapter 132 of the Texas Education Code concerning career schools and colleges.

(2) A branch campus, extension center, or other off-campus unit operated by a private or independent Texas postsecondary institution as defined by Texas Education Code, §61.003.

(3) The home campus, headquarters, or Texas location(s) of an institution which have been fully accredited by a recognized accrediting agency.

(4) An institution or degree program that has received approval by an agency of the State of Texas authorizing the graduates of the institution to take a state licensing examination administered by that agency. The granting of permission by a state agency to a graduate of an institution to take a licensing examination does not by itself constitute approval of the institution or degree program required for an exemption under this subsection.

(b) Institutions holding a Certificate of Approval from the Texas Workforce Commission to operate as a Career School or College and are not exempt under this chapter may be able to obtain a Certificate of Authority to award associate degrees under §7.9 of this chapter (relating to Certificate of Authority for Career Schools and Colleges). All other non-exempt institutions must use either §7.7 or §7.8.

(c) The home campus of an institution that is not exempt under the provisions of subsection (a) of this section may obtain a certificate of authority under either §7.7 of this chapter (relating to Certificate of Authority) or an alternative certificate of authority under §7.8 (relating to Alternative Certificates of Authority).

(d) Branch campuses of out-of-state public institutions must obtain a certificate of authority as outlined in §7.10 of this chapter (re-

lating to Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions).

(e) Agents of an institution that is not exempt under the provisions of subsection (a) of this section, or operating with an alternative certificate of authority as provided by §7.8 of this chapter, must register with the Board as provided by §7.11 of this chapter (relating to Registration of Agents).

(f) A substantive change in the conditions under which an institution was granted a certificate of authority, an alternative certificate of authority or an exemption (certificate of authorization) must be reported in accordance with §7.12 of this chapter (relating to Occasional Courses, Changes of Level of Instruction, Changes of Ownership, and Other Substantive Changes). An accredited institution that is exempt under subsection (a)(3) of this section continues in that status so long as it maintains accreditation by a recognized accrediting agency.

(g) An institution offering only religious degrees may request a letter stating that the Board does not have oversight.

(h) Revocation of an exemption.

(1) If the Commissioner receives credible evidence that an institution is no longer qualified for an exemption, the institution shall be notified that its exempt status is revoked, and that the institution is subject to the requirements of Texas Education Code, Chapters 61 or 132 as appropriate, and this chapter.

(2) Upon receipt of the notice of revocation, the institution must cease granting or awarding degrees in Texas until it has either been granted a certificate of authority to grant degrees, or has received a determination that it did not lose its qualification for an exemption.

(3) Within ten (10) days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption.

(4) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(5) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.5. Standards for Operation of Institutions.

All institutions that operate within the State of Texas are expected to meet the following standards. Standard (2) relating to Qualifications of Institutional Officers and Standard (3) relating to policy making do not apply to branch campuses operating under §7.10 of this chapter (relating to Operation of Branch Campuses, Extension Centers or Other Off-Campus Units, Occasional Courses and Changes in Level). These standards will be enforced through the certificate of authority process or the alternative certificate of authority process. Standards addressing the same principles will be enforced by recognized accrediting agencies. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by institutional and specialized accrediting bodies and the academic and professional organizations.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws,

including the rules and regulations adopted to administer those ordinances and laws. Career Schools and Colleges also shall demonstrate compliance with Texas Education Code, Chapter 132 by supplying a copy of a certificate of approval to operate a career school or college or a letter of exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of administrators, supervisors, counselors, agents, and other institutional officers shall reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned advanced degree appropriate for the mission of the institution, preferably, an earned doctorate awarded by an institution accredited by a recognized accrediting agency, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Governance. The institution shall have a system of governance that facilitates the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, including students, faculty and staff. If the institution has a governing board consisting of at least three (3) members, and that board focuses on the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, this standard will be considered as met. In the absence of such a governing board, the burden to establish appropriate safeguards within its system of governance and to demonstrate their effectiveness falls upon the institution.

(4) Distinction of Roles. The institution shall define the powers, duties and responsibilities of each element of the system of governance, to include the board of directors or trustees, the chief operating officer, president or director, the principal administrators, faculty, and students, if students participate in school governance.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects

include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Institutional Evaluation.

(A) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(B) For applied associate degree programs, the evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, and success of its students.

(C) For applied associate degree programs relating to occupations where state or national licensure is required, graduates must pass the licensing examination at a rate acceptable to the related licensing agency.

(9) Administrative Resources. The institution has the administrative capacity to meet the daily needs of the administration, faculty and students, including facilities, laboratories, equipment, technology and learning resources that support the institution's mission and programs

(10) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification. If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The academic skills of each entering student may be assessed with an instrument of the institution's choice. The institution may provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(11) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching in an academic associate, applied associate leading to required state or national licensure, or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member except, as provided by subparagraph (E) of this paragraph, teaching career and technical courses

in an applied associate degree program, or career and technical courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency and at least three (3) years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching general education courses in an applied associate degree program shall have at least a baccalaureate degree from an institution accredited by a recognized accrediting agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Except as provided by subparagraph (E) of this paragraph, graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. Such appointments shall be limited and the justification for each such appointment shall be fully documented. The Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(12) Faculty Size. There shall be a sufficient number of faculty holding full-time teaching appointments that are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one (1) full-time faculty member in each program. At the graduate level, there shall be at least two (2) full-time faculty members in each program.

(13) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(14) Curriculum

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved

programs, provided that it does not exceed twenty-five (25) percent of all courses.

(B) Academic associate degrees must consist of at least sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. Applied associate degrees must consist of at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours and not more than thirty-six (36) semester credit hours or forty-five (45) quarter credit hours and not more than fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(15) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least twenty (20) semester credit hours or thirty (30) quarter credit hours. Each applied associate degree program shall contain a general education component of at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least twenty-five (25) percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a recognized accrediting agency or hold a certificate of authority.

(16) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas,

in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the Advanced Placement program (AP) or the College Level Examination Program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(17) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection of books, publications, on-line materials and other resources and with staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Applied associate degree programs shall provide adequate and appropriate resources for completion of course work.

(18) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(19) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

- (i) student contact and identification information, including address and telephone number;
- (ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);
- (iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and
- (iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state and federally guaranteed student loans.

(20) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog. Institutions relying on electronic catalogs must ensure the availability of archived editions in order to serve the needs of alumni and returning students. The catalog must contain, at minimum, the following information:

- (i) the institution's mission;
 - (ii) a statement of admissions policies;
 - (iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;
 - (iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;
 - (v) cancellation and refund policies;
 - (vi) a definition of the unit of credit as it applies at the institution;
 - (vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;
 - (viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;
 - (ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;
 - (x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;
 - (xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;
 - (xii) a complete listing of all scholarships offered, if any;
 - (xiii) a statement describing the nature and extent of available student services;
 - (xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;
 - (xv) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and
 - (xvi) any disclosures specified by the Board or defined in Board rules. Institutions relying on electronic catalogs must ensure the availability of archived editions in order to serve the needs of alumni and returning students.
- (C) The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs.

(E) Any special requirements or limitations of program offerings for the students at the Texas branch must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to enforce the rules and regulations governing state, and federally guaranteed student loans by temporarily withholding such credentials.

(21) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(22) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters; outline the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board and/or Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(23) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

(24) Learning Outcomes. An institution may deviate from Standard 11 relating to Faculty Qualifications, Standard 12 relating to Faculty Size, Standard 16 relating to Credit for Work Completed Outside a Collegiate Setting, and Standard 17 relating to Learning Resources, if there is an objective system of assessing learning outcomes in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved.

§7.8. Alternative Certificate of Authority.

In lieu of the standard certification of authority requirements for institutions and their agents in §§7.7, 7.11, and 7.12 of this chapter, an institution may obtain an alternative certificate of authority to issue degrees as provided by this section. Alternative certificates of authority shall be issued by the Commissioner and are temporary, being valid for twelve (12) months, after which a regular certificate of authority shall be required. A site visit shall be conducted by Board staff during the initial twelve month period.

(1) Surety Instrument Requirement

(A) At the time application is made for an alternative certificate of authority, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Board a surety bond or surety alternative which meets the requirements

set forth in these sections. Schools located in Texas shall file one bond or surety alternative covering the school and its agents.

(B) The amount of the bond or other allowable surety instrument submitted to the Board with an application for an alternative certificate of authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms.

(C) A school, whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students, shall be noncompliant with these sections, and, if, after ten (10) working days from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its alternative certificate of authority.

(D) Following the initial filing of the surety bond with the Board, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than twenty-five thousand dollars (\$25,000).

(E) The institution shall include a proposal in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the bond or surety alternative.

(F) In order to be approved by the Board, a surety bond must be:

(i) Executed by the applicant and by a surety company authorized to do business in Texas;

(ii) In a form acceptable to the Board;

(iii) Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation; and

(iv) An original bond.

(G) In lieu of a surety bond, an applicant may file with the Board an assignment of savings account that:

(i) Is in a form acceptable to the Board;

(ii) Is executed by the applicant; and

(iii) Is executed by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation.

(H) In lieu of a surety bond, an applicant may file with the Board a certificate of deposit that:

(i) Is issued by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation;

(ii) Is either:

(I) Payable to the Board;

(II) In the case of a negotiable certificate of deposit, is properly assigned without restriction to the Board; or

(III) In the case of a non-negotiable certificate of deposit, is assigned to the Board by assignment in a form satisfactory to the Board.

(I) In lieu of a surety bond, an applicant may file with the Board an irrevocable letter of credit that:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation.

(J) In lieu of a surety bond, an applicant may file with the Board a properly executed participation contract with a private association, partnership, corporation or other entity whose membership is comprised of postsecondary institutions, which:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

(K) Whenever these sections require a document to be executed by an applicant the following shall prevail:

(i) If the applicant is a corporation, the document must be executed by the president of the corporation or persons designated by the corporate board.

(ii) If the applicant is a limited liability corporation the document must be executed by the members.

(iii) If the applicant is a partnership, the document must be executed by all general partners.

(iv) If the applicant is an individual, the document must be signed by the individual.

(v) If the applicant is a state agency, the document must be signed by the Director of that Department.

(vi) If the applicant is a local government, the document must be signed by the mayor or board president.

(L) Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution and resources equal to or exceeding the maximum bonds required of all single schools.

(M) A school applying for an alternative certificate of authority shall be exempt from the surety instrument requirement if it can demonstrate a United States Department of Education composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.1 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two (2) years.

(2) Application and Statement. Institutions seeking an alternative certificate of authority are urged to obtain informal guidance

from Board staff before filing a formal application. The Board will accept applications for an alternative certificate of authority only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.

(3) An institution seeking an alternative certificate of authority shall submit to the Board a completed application, which must demonstrate it meets, or has the ability to meet, depending on circumstances, the standards set out in §7.5 of this chapter (relating to Standards for Operation of Institutions); a signed and dated affirmation statement, acknowledging compliance with certification criteria set forth in this section; and a notarized attestation statement signed by the chief executive officer or equivalent and evidence of approval from the Texas Workforce Commission. The Board will not approve an application for an Alternative Certificate of Authority unless the Texas Workforce Commission has approved the institution to offer a course of instruction or has been issued an exemption. The application form shall contain:

(A) The name and address of the institution and its purpose;

(B) The names of the sponsors or owners of the institution;

(C) The regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution;

(D) The names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(E) The names of faculty who have been retained, their area(s) of teaching, and their degrees held;

(F) The types of degrees to be awarded and a list of courses that may be included in each degree program; and

(G) The location of any facilities maintained or being constructed and a list of potentially hazardous equipment which requires a federal or state government license to operate, if any has been acquired, that is to be used by students in the teaching process.

(4) Institutions shall certify that they maintain a list of their agents as defined in §7.3 of this chapter (relating to Definitions) and have policies to ensure that their agents are of good character and provide accurate information to prospective students and their families, but such agents are not required to register with the Board or submit a fee.

(5) Applications must be submitted with an original and four copies and accompanied by the required fee. Alternative certificate of authority fees shall be five hundred dollars (\$500) more than the fee for a regular certificate of authority, as established in §7.7(c) of this chapter (relating to Certificate of Authority).

(6) Board's review of applications.

(A) Within ninety (90) days of receipt of a complete application, Board staff will review said application and recommend to the Commissioner either approval or denial of the application.

(B) Within one hundred twenty (120) days of receipt of a complete application, the Commissioner shall either award a one-year certificate of authority or deny the application.

(C) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution in-

vokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(7) Terms and limitations of an alternative certificate of authority.

(A) The alternative certificate of authority to grant degrees is valid for one (1) year from the date of issuance.

(B) The institution shall notify the Board at least ten (10) working days prior to the start of the first class of its first year schedule. Board staff shall visit the institution and interview both staff and students at least once during the first year.

(C) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in §7.7(d)(6)(D) of this chapter. An institution awarded an alternative certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the alternative certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are usually mentioned, including the institution's catalog and the home page of the institution's Internet website.

(D) The Commissioner may revoke an institution's alternative certificate of authority to grant degrees at any time if the Commissioner finds that:

(i) Any statement contained in an application for the certificate is untrue;

(ii) The institution has failed to maintain the standards of the Board, as described herein, on the basis of which the certificate was granted;

(iii) Advertising or representations made on behalf of the institution is deceptive or misleading; or

(iv) The institution has violated any provision of this subchapter.

(8) Continuing operations after one year.

(A) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current alternative certificate of authority, an institution, if it desires to continue operations, shall make application to the Board following the process in §7.7(h) of this chapter.

(B) The application will be evaluated in the same manner as that prescribed for evaluation of an initial application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 17. RESOURCE PLANNING

SUBCHAPTER I. RULES APPLYING TO ENERGY SAVINGS PERFORMANCE CONTRACT PROJECTS

19 TAC §17.80, §17.82

The Texas Higher Education Coordinating Board adopts amendments to §17.80 and §17.82 concerning rules applying to energy savings performance contract projects without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9041). Specifically, the purpose of these amendments is to address recommendations presented by the State Auditor's Office following its review of energy performance contracts at state buildings conducted earlier this year.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.9624.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 21. STUDENT SERVICES

SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2100, 21.2101, 21.2103, 21.2106 - 21.2108

The Texas Higher Education Coordinating Board adopts amendments to §§21.2100, 21.2101, 21.2103 and 21.2106 - 21.2108, concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act), without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8860).

Specifically, §21.2100(7) - (19) are renumbered due to the deletion of §21.2100(6) and §21.2100(10). The deletion of §21.2100(6) and §21.2100(10) would eliminate the definitions of "Commissioner" and "Federal Survivor Benefits," respectively,

as these terms no longer appear in the text of this rule. The amendment to renumbered §21.2100(7) removes the reference to the qualifications for a dependent child, as the term "dependent" only applies to children who are not biological or adopted. The amendment to renumbered §21.2100(12) expands the definition of "identification number" to include a school-assigned identification number for eligible veterans who are non-U.S. citizens. The amendment to §21.2101(a) clarifies the types of fees for which the exemption cannot be used. The amendment to §21.2101(b) specifies that Hazlewood benefits can be combined with federal education benefits based on their combined value for the entire semester. The amendment to §21.2103(1) deletes "dependent" from the description of children as, by definition in these rules, "children" does not require a person to have been a dependent if he or she was a biological or adopted child at the time the parent died or became disabled. The amendment to §21.2106 updates the section title from "Applications" to "Awards," which is a better representation of the section's content. In §21.2106(a)(1), the amendment clarifies that only Hazlewood hours used since Fall 1995 count against a student's 150 hours of eligibility. The amendment to §21.2107 deletes two words that are duplicated. The amendment to §21.2108(a)(2) deletes the reference to "social security number," as a school-assigned identification number is now acceptable.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt rules to provide for the efficient and uniform application of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS

GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §§22.196 - 22.202

The Texas Higher Education Coordinating Board adopts new §§22.196 - 22.202, concerning Provisions for Scholarships for Students Graduating in the Top 10 Percent of Their High School Class without changes to the proposed text as published in the October 17, 2008, issue of the *Texas Register* (33 TexReg 8639).

House Bill 1, General Appropriations Act of the 80th Texas Legislature, §55, (III-58), instructs the Coordinating Board to develop, in conjunction with the Governor's Office, a program to provide scholarships for undergraduate students who have graduated in the top 10 percent of their high school graduating class from an accredited Texas high school. The new sections establish definitions, identify the eligibility requirements for the scholarships, and set the award amounts and selection criteria for the program. Scholarships will be awarded for the 2009-2010 academic year. The Governor's Office and the Coordinating Board staff reached agreement on these proposed rules after extensive discussions. The legislation requires that the scholarship program be in place and the funds distributed by the end of fiscal year 2009.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, and Article III of the General Appropriations Act of the 80th Texas Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.228

The Texas Higher Education Coordinating Board adopts amendments to §22.228, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program, without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8862). Specifically, the amendment to subsection (b)(3) corrects the citation relating to Hardship Provisions. The amendment to subsection (b)(7) corrects the citation relating to Satisfactory Academic Progress. Subsection (c) (Discontinuation of Eligibility or Non-Eligibility) was proposed for deletion in its entirety, as these procedures are addressed in §22.230.

The Texas Higher Education Coordinating Board adopts amendments to §22.228 without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8862), concerning the Toward EXcellence, Access, & Success (TEXAS) Grant Program. Specifically, the amendment to Subsection 22.228(b)(3) corrects the citation relating to Hardship Provisions. The amendment to Subsection (b)(7) corrects the citation relating to Satisfactory Academic Progress. Subsection 22.228(c) (Discontinuation of Eligibility or Non-Eligibility) is

proposed for deletion in its entirety, as these procedures are addressed in §22.230.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to implement the TEXAS Grant program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.3

The Texas State Board of Dental Examiners (Board) adopts an amendment to §100.3. The amendment is adopted without changes to the proposed text as published in the September 26, 2008 issue of the *Texas Register* (33 TexReg 8091) and will not be republished. The amendment clarifies Board policies regarding professional conduct by Board members.

A comment was received from W. Kenneth Horwitz, D.D.S., Susana Paoloski, D.D.S., and John Chandler, D.D.S. requesting that the Board amend the rule to prohibit board members, board consultants, and Texas WREB examiners from testifying in a civil trial involving a case under board investigation. John D. Chandler, D.D.S. also submitted a separate comment suggesting that the proposed amendment replace the term "should" with "must" where it appears in the amendment. Susana Paoloski, D.D.S. also submitted a separate comment suggesting that the term "may not" be replaced with "shall not" in subsection (g) of the amendment. This comment also suggested a prohibition on expert testimony by board members for two to five years following retirement from the board and that the Board review all past cases and reopen any case involving expert testimony by a Board member. A comment was received from the Greater Houston Dental Society requesting that the rule be amended to replace "should" with "shall" and "may not" with "shall not" where they appear in the amendment, and suggested that a board member wishing to provide expert testimony in any case not involving a dental licensee gain permission from the board's executive committee in advance. A comment was received from Mark Connelly, D.D.S. requesting that the rule be amended to replace "should" with "shall" and "may not" with "shall not" where they appear in the amendment, and suggested that former board

members be prohibited from providing expert testimony for two to three years following retirement from the board. This comment also suggested that the Board review all past cases and reopen any case involving expert testimony by a Board member where a conflict could have potentially existed. A comment was received from Douglas Terry, D.D.S. requesting that the rule be amended to replace "should" with "shall" and "may not" with "shall not" where they appear in the amendment, and suggested that former board members be prohibited from providing expert testimony for two to three years following retirement from the board. This comment also suggested that the Board review all past cases and reopen any case involving expert testimony by a Board member where a conflict could have potentially existed, and suggested that all prohibitions be extended to WREB examiners. A comment was received from the Texas Dental Association expressing support for the amendment, but suggested replacing the word "should" with "shall" where it appears in the amendment. A comment was received from the Texas Academy of General Dentistry expressing support for the amendment.

All comments received were carefully considered by Board Staff. The amendment was recommended for adoption without change in order to best reflect current legislative requirements.

This section is adopted under Texas Government Code §§2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Chapter 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900604

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Effective date: March 5, 2009

Proposal publication date: September 26, 2008

For further information, please call: (512) 475-0972



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.9

The Texas State Board of Examiners of Psychologists adopts amendments to rule §463.9, Licensed Specialist in School Psychology without changes to the proposed text as published in the December 5, 2008, issue of the *Texas Register* (33 TexReg 9859).

The amendments are being adopted to assist the LSSP applicant in transitioning from an internship to the LSSP trainee status.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2009.

TRD-200900565

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 3, 2009

Proposal publication date: December 5, 2008

For further information, please call: (512) 305-7706



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §§97.61, 97.63 - 97.72

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §97.61 and §§97.63 - 97.72, concerning immunization requirements in Texas elementary and secondary schools and institutions of higher education. Sections 97.63, 97.64, and 97.66 are adopted with changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6705). Sections 97.61, 97.65, and 97.67 - 97.72 are adopted without changes, and the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption every four years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 97.61 and 97.63 - 97.72 have been reviewed and the department has determined that reasons for proposing amendments to §97.61 and §§97.63 - 97.72 continue to exist because rules on this subject are needed. This rulemaking adoption makes various clarifying amendments designed to improve the efficiency and readability of these rule sections, and

also makes certain substantive changes which the department believes are in the best interest of public health.

The substantive amendments to §97.63 are adopted in order to update the Texas elementary and secondary school immunization requirements so that they adhere more closely to the current version of the Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices (ACIP) recommended immunization schedule (see <http://www.dshs.state.tx.us/immunize/docs/6-105.pdf>). These revisions amend the frequency of vaccinations and booster shots for diseases already covered in the rule, and also add vaccination requirements regarding meningococcal disease (see full discussion in the Section-By-Section Summary below).

The amendments to §97.64 are adopted in order to update, simplify and clarify the rule text regarding the vaccines required and the limited exceptions for students enrolled in the specified health-related and veterinary courses. The department intends for the adopted changes to address concerns expressed to the department in the past regarding a perceived lack of clarity in this rule section.

The department held a public meeting on Monday, May 12, 2008, which served as a forum to receive informal comments from interested persons regarding the rules; all comments received were in support of the proposed amendments. An official 30-day comment period was held between August 23 to September 22, 2008; a total of 31 comments were received from 19 commenters (see the full discussion in the Comments section of the preamble).

SECTION-BY-SECTION SUMMARY

From the proposed amendments to the final amendments adopted herein, the following changes were made to the rule text:

Concerning §97.63(1), the phrase ", and in the schedules in this section are," is added to more clearly show that the "four day rule" articulated in this provision is applicable to the schedules found in both of the referenced locations.

Concerning §97.63(2), the phrase "for diseases listed below" was moved within the provision for better readability. Also in this section, the phrase ", or institution of higher education" was deleted since those requirements are found under §97.64.

Concerning §97.63(2)(B), the clarifying phrase "according to the schedule listed" was added as a reference to the new schedule language listed below in that rule.

Concerning §97.63(2)(B)(i)(I), the title "Kindergarten entry" was added to the paragraph in order to help further clarify the applicability of intent.

Concerning §97.63(2)(B)(i)(I), the phrase "If any combination of four doses of OPV and IPV was received before four years of age, no additional dose is required" was removed. The phrase, "four doses of OPV or IPV in any combination by age 4 - 6 years old is considered a complete series, regardless of age at the time of the third dose" was added to improve readability and clarity concerning the intent of the rule; and the phrase, "if any combination of four doses of OPV and IPV was received before four years of age, no additional dose is required" is being deleted.

Concerning §97.63(2)(B)(ii)(I), the title "Kindergarten entry" was added to the paragraph in order to help further clarify the applicability of intent.

Concerning §97.63(2)(B)(ii)(II), the title "Students seven years of age or older" was added to the paragraph in order to help further clarify the applicability of intent.

Concerning §97.63(2)(B)(ii)(III), the section of the rule regarding Tdap requirements has been slightly reorganized in order to more clearly state what the requirements are for the school years at issue. A new provision (-a-) has been written to state the requirements for the current school year (and on through any 2009 summer sessions), versus the new requirements at provisions (-b-) and (-c-) that being with the 2009 - 2010 school year. This is to avoid the perception of a gap with no requirements from the date this adoption goes into effect through the start of the 2009 - 2010 school year.

Concerning §97.63(2)(B)(ii)(III)(-b-), the phrase, "(III) Tdap" was removed and the phrases, "Seventh grade" was added to clarify the provision, and the abbreviation "SY" was included to improve readability.

Concerning §97.63(2)(B)(ii)(III) regarding Tdap, the proposed rule language stated: "Beginning school year (SY) 2009 - 2010, students will be required to have one booster dose of a tetanus/diphtheria/pertussis-containing vaccine for entry into 7th grade..."; however, this rule language did not effectively communicate a clear, progressive schedule for implementation for students who are in the 8th grade through 12th grade. Consequently, §97.63(2)(B)(ii)(III)(-c-) was added to address this issue, which states the following: "Grades 8 - 12. Students who have not already received Tdap vaccine are required to receive one booster dose of Tdap when ten years have passed since the last dose of a tetanus-diphtheria-containing vaccine." This change addresses those students in grades 8 - 12 that would not meet the 7th grade requirement at the time of implementation.

Concerning §97.63(2)(B)(iii), the word "MMR" was added in order to provide clarity concerning the organization of the subsection. The section of the rule regarding MMR requirements has been slightly reorganized in order to more clearly state what the requirements are for the school years at issue. A new provision (I) has been written to state the requirements for the current school year (and on through any 2009 summer sessions), versus the new requirements at provision (II) that being with the 2009 - 2010 school year. This is to avoid the perception of a gap with no requirements from the date this adoption goes into effect through the start of the 2009 - 2010 school year.

Concerning §97.63(2)(B)(iii)(II) regarding MMR, the phrases "(iii) MMR. Students" and "upon kindergarten entry for the following grades and school years (The first dose shall be administered on or after the first birthday)" were removed and replaced with the phrase, "with the first dose received on or after the first birthday for the following grades and school years" to improve readability and clarity concerning the intent of the rule.

Concerning §97.63(2)(B)(iii)(II)(-b-) - (-m-) regarding MMR, the school grades listed per school year in a series were changed in order to provide clarity and readability by listing the grades in the following order: K - 2; K - 3; K - 4; K - 5; etc.

Concerning §97.63(2)(B)(iv)(I) regarding hepatitis B, the word, "upon" is deleted and the phrase "no later than" has been added in order to better capture the provision's intent.

Concerning §97.63(2)(B)(iv)(II) regarding hepatitis B, the phrase "an existing" is replaced with the word "this" to improve clarity and readability.

The section of the rule regarding varicella requirements has been slightly reorganized in order to more clearly state what the requirements are for the school years at issue. A new provision (I) has been written to state the requirements for the current school year (and on through any 2009 summer sessions), versus the new requirements at provision (II) that being with the 2009 - 2010 school year. This is to avoid the perception of a gap with no requirements from the date this adoption goes into effect through the start of the 2009 - 2010 school year.

Concerning §97.63(2)(B)(v)(II)(-b-) - (-g-) regarding varicella, the school grades listed per school year in a series were changed in order to provide clarity by listing the grades in the following order: K - 1; 7 - 8; K - 2; 7 - 9; etc.

Concerning §97.63(2)(B)(vi), the section of the rule regarding Hepatitis A requirements, has been slightly reorganized in order to more clearly state what the requirements are for the school years at issue. A new provision (I) has been written to state the requirements for the current school year (and on through any 2009 summer sessions), versus the new requirements at provision (II) that being with the 2009 - 2010 school year. This is to avoid the perception of a gap with no requirements from the date this adoption goes into effect through the start of the 2009 - 2010 school year.

Concerning §97.63(2)(B)(vi)(II) regarding the hepatitis A vaccine, the phrase "are required to have two doses of hepatitis A vaccine for the following grades and school years (The first dose shall be administered on or after the first birthday)" was removed and replaced with the phrase "with the first dose received on or after the first birthday for the following grades and school years" to improve readability and clarity concerning the intent of the rule.

Concerning §97.63(2)(B)(vi)(II)(-a-) - (-m-) regarding hepatitis A, the school grades listed per school year in a series were changed in order to provide clarity and improve readability by listing the grades in the following order: K - 2; K - 3; K - 4; K - 5; etc.

Concerning §97.63(2)(B)(vii)(II) - (VI) regarding meningococcal, the school grades listed per school year in a series were changed in order to provide clarity and improve readability by listing the grades in the following order: 7 - 8; 7 - 9; 7 - 10; etc.

Concerning §97.64(a), the phrase, "applicability for non-veterinary students" was replaced with the phrase "students enrolled in (non-veterinary) health-related courses" to improve readability and clarity concerning the applicability of the subsection.

Concerning §97.64(c)(1), the word, "with" was added to improve readability.

Concerning §97.64(c)(1) and (2), the word "subsection" was removed, the word, "subsections" was added, and the phrase "and/or (d)" was added in order to more clearly state that the opportunity for provisional enrollment, under the terms already given, and the requirements regarding documentation of immunizations, are applicable to veterinary students, described in subsection (d), as well as students covered under the subsection (a).

Concerning §97.64(c)(3), the word, "rule" was removed to improve readability.

Concerning §97.64(d)(1), the rule language states the following: "Serum antibody levels must be checked every two years, with a booster dose of rabies vaccine administered if the titer is inadequate." In order to clarify what is meant by the word "inad-

equate," the phrase "according to current Centers for Disease Control and Prevention guidance" is included.

Concerning §97.66, the rule section title was changed by adding the phrase "; Non-Veterinary" to the parenthetical to more clearly state that this rule section corresponds to the requirements of §97.63, not §97.64.

The following is a summary of the adopted amendments to each section that have not changed since being originally published as proposed on August 22, 2008:

Section 97.61.

These amendments to §97.61 revise the section title for clarity, and revise subsection (b) to update to the department's current name. Subsection (c) of the rule is updated by deleting the cross-reference to Texas Health and Safety Code, §81.002, because the term "instruction" is not contained in the current version of that statutory provision.

Section 97.63.

The amendments to §97.63 are adopted primarily in order to update the Texas elementary and secondary school immunization requirements to adhere more closely to the current version of the CDC, Advisory Committee on Immunization Practices (ACIP) recommended immunization schedule. The department agrees with these recommended changes from a public health perspective. These substantive changes to the rule section have been drafted so that they would become effective for the 2009 - 2010 school year, which should give school districts sufficient time to perform outreach/education regarding the new requirements and also for the required vaccinations to be administered. Changes are also adopted in this section to improve clarity and readability.

The department adopts the following amendments to become effective for the 2009 - 2010 school year:

Section 97.63(2)(B)(ii)(III) concerning Td/Tdap booster requirement:

-The current rule language provides that one booster dose of a tetanus/diphtheria containing-vaccine is required within the last 10 years.

-The adopted amendment provides that there be a Tdap requirement for students in 7th grade beginning in the 2009 - 2010 school year.

-For the 2008 - 2009 school year through the end of any Summer session of the 2008 - 2009 school year, students are required to have one dose of a tetanus-diphtheria containing vaccine within the last ten years.

-The rationale for the adopted rule amendment is the following:

(1) ACIP/CDC recommendation for adolescents (11 - 18 years) to receive a single booster dose of Tdap instead of Td (unless medically contraindicated);

(2) Preferred age for Tdap is 11 - 12 year old visit.

Section 97.63(2)(B)(iii) concerning measles, mumps, and rubella:

-The current rule language provides that two doses of a measles-containing vaccine are required, one dose of mumps and one dose of rubella for grades K - 12.

-The adopted rule amendment requires two doses of MMR, which is the current combination vaccine that is the recommended method to get the three individual vaccine components.

-For the 2008 - 2009 school year through the end of any summer session of the 2008 - 2009 school year, students are required to have two doses of a measles-containing vaccine, and one dose each of rubella vaccine and mumps vaccine.

-The rationale for the adopted rule amendment is the following:

(1) In order to align the Texas requirements with the most recent ACIP/CDC recommendations.

(2) Recent mumps outbreaks, January 1 through May 2, 2006, resulted in 2,597 cases of mumps in 11 states. The department wants to respond proactively before similar outbreaks occur in Texas.

Section 97.63(2)(B)(iv) concerning Hepatitis B:

The current rule language was written to phase-in a Hepatitis B vaccination requirement, and included a progressive schedule for certain grades by certain years. Now that the phase-in period has passed, the adopted amendment is written to articulate the requirement after the phase-in period and would delete the phase-in language.

Section 97.63(2)(B)(v) concerning varicella:

-The current rule language provides that one dose is to be received on/after first birthday for grades K - 12, according to the listed schedule.

-The adopted amendment provides that a progressive 2nd dose requirement for varicella at kindergarten and 7th grade entry be added (each subsequent school year, the next grade is added to the schedule).

-For the 2008 - 2009 school year through the end of any summer session of the 2008 - 2009 school year, students are required to have one dose of varicella vaccine received on or after the first birthday for grades K - 12.

-The rationale for the adopted amendment is the following:

(1) In order to align the Texas requirements with the most recent ACIP/CDC recommendations.

(2) With one-dose vaccination schedule, vaccine effectiveness of 85% has not been sufficient to prevent varicella outbreaks in highly-vaccinated school populations.

(3) In these school outbreaks, varicella vaccine coverage ranges from 96% to 100%, with vaccine effectiveness ranging from 72% to 85%.

(4) The peak age-specific incidence of varicella has shifted from 3 - 6 year old children in the pre-vaccine era to 9 - 11 year old children in the post-vaccine era, both for immunized and un-immunized children during these outbreaks.

(5) Studies show that the immune response after the 2nd dose of varicella vaccine demonstrate a greater than 10-fold boost.

(6) Approximately >99% of children achieve an antibody response after the 2nd dose of varicella vaccine compared with 76% - 85% of children with a single dose of varicella vaccine.

Section 97.63(2)(B)(vi) concerning Hepatitis A:

-The current rule language provides two doses of hepatitis A vaccine for grades K - 3 in 40 counties designated by the department.

-The adopted amendment requires that there be a statewide requirement for hepatitis A for kindergarten enterers in the 2009 - 2010 school year, and in subsequent years, the next grade level

will be incorporated. The phrase "The first dose shall be administered on or after the first birthday" would be added to indicate when the series begins.

-For the 2008 - 2009 school year through the end of any summer session of the 2008 - 2009 school year, upon entry into kindergarten through third grade, two doses of hepatitis A vaccine are required for students attending a school located in a high incidence geographic area as designated by the department.

-The rationale for the adopted rule amendment is the following:

(1) In order to align the Texas requirements with the most recent ACIP recommendations.

(2) Majority of reported hepatitis A cases come from areas where hepatitis A vaccine is not required for children attending kindergarten through 3rd grade.

(3) A population of young children who may not have received hepatitis A vaccine still exist in counties where hepatitis A vaccine is not required for kindergarten attendance.

Section 97.63(2)(B)(vii) concerning meningococcal:

-Adds a 7th grade requirement for meningococcal vaccine on a schedule similar to Tdap in these adopted rules.

-The rationale for the adopted amendment is the following:

(1) In order to align the Texas requirements with the most recent ACIP/CDC recommendations.

(2) Adolescents and young adults are most likely to get meningococcal disease, especially those living in group settings such as college dorms.

(3) From 2000 - 2006, Texas averaged 106 cases and 4 deaths per year (excluding unknown ages).

(4) 27% of all cases occur in school aged children, 5 - 19 years.

(5) 35% of deaths occur among 10 - 29 year olds.

(6) Among infants aged <1 year of age, >50% of cases are caused by serogroup B, for which no vaccine is licensed nor available in the United States (US).

(7) For all reported cases of meningococcal disease among persons aged ≥11 years, 75% are caused by serogroups (C, Y, or W-135), which are included in vaccines licensed and available in the US.

Also, §97.63(1) and (2), is amended to improve clarity and readability. Section 97.63(2)(A) is amended to improve clarity and readability, to update the agency name and address, and to insert the relevant cross-reference to the department's Immunization Schedule. Section 97.63(2)(B) is amended to delete certain references to kindergartens because the rule's age-triggers in those places are sufficient to be protective of the public health. Section 97.63(2)(B)(i), (ii)(I), and (ii)(II), are also amended to improve readability. Section 97.63(2)(B)(ii)(IV) is amended by adding the phrase "(or prior to)" in order to clarify the schedule for this vaccination.

Section 97.64.

The adopted amendments to §97.64 reorganize the section to improve clarity and readability, in part in response to past concerns expressed to the department. Subsection (a) is rewritten to provide a clear statement of the section's applicability as to non-veterinary students, with a newly written subsection (d) cov-

ering section applicability as to veterinary students. Existing language at subsections (a) and (d) is deleted.

The adopted amendments to §97.64 also update and clarify the rule text regarding the vaccines required for students covered by the section. Existing language at subsection (b) is deleted, with new language being adopted which would describe the vaccines that are required. Subsections which currently contain language regarding required vaccines, subsections (d) through (k), are deleted, with subsections (d) and (e) replaced with entirely new language.

The following is a summary of the adopted substantive amendments to new §97.64(b) regarding required vaccines:

-Tetanus-diphtheria:

One dose of a tetanus-diphtheria toxoid (Td) is required within the last 10 years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap). The change to allow Tdap in lieu of Td reflects the recommendation by the ACIP for adults at high risk, such as students at post-high school educational institutions covered under this section.

-Measles, mumps, and rubella vaccines:

The adopted amendments to §97.64 would revise the section for measles, mumps, and rubella vaccines for clarity. The adopted reference to MMR reflects that vaccines for the 3 diseases are now commonly given in the 1 combination vaccine.

The adopted amendments to §97.64 also delete existing language in subsection (c) regarding provisional enrollment, and cover that issue through new subsection (c) language, which is stated in terms of "Limited Exceptions." This rewrite is designed to add consistency and clarity to the issue of what exceptions to the general requirements there are and how those exceptions work. The adopted language would allow students to participate in coursework activities described in subsection (a) if: (1) the student receives at least 1 dose of each specified vaccine prior to enrollment and completes the vaccination series according to the stated schedule (except that the student cannot participate in coursework activities involving the contact described in subsections (a) or (d) until the full vaccination series is completed); or (2) the student provides acceptable proof of serologic confirmation of immunity. The adopted language goes on to state that students claiming to have satisfied 1 of these 2 conditions cannot engage in the activities described in subsection (a) until they have provided acceptable proof.

New adopted language at §97.64(d) covers applicability of the rule section to students enrolled in schools of veterinary medicine. The existing requirement in subsection (a) for these students to obtain Hepatitis B vaccinations would be moved to subsection (d) as the new (d)(2).

New adopted language at §97.64(e) provides a cross-reference to §97.68 where requirements regarding "acceptable evidence" are found, since that term is used in this rule section.

Section 97.65.

The adopted amendments to §97.65 revise the section title for clarity. The adopted amendments to subsection (a) explicitly state that referenced laboratory report must be a valid one, and also move the word "either" in the sentence to improve clarity and readability. The adopted amendments to subsection (b) revise the rule text for clarity and readability, and specify that statement made by the referenced person should be in writing. Adopted changes to subsection (b) also state that a legal guardian or

managing conservator may also make the referenced statement, if applicable. Adopted changes to this subsection also provide a reference to a form considered acceptable for a parent, legal guardian, managing conservator, or physician to complete, in lieu of a vaccine record, in order to attest to a child's positive history of varicella disease or varicella immunity.

Section 97.66.

The adopted amendment to §97.66 revises the section title for clarity, since the provisional enrollment for higher education students is located in §97.64.

Section 97.67.

The adopted amendments to §97.67 provide that all schools and child-care facilities are required to maintain immunization records sufficient for a valid audit "or other assessment" to be completed by the entities listed. The changes are adopted in order to reflect that not all records checks are full-blown audits, and also to explicitly state the various governmental officials who are authorized under other law to perform records checks, audits, etc.

Section 97.68.

The adopted amendments to §97.68 revise the section title and subsection (b) for clarity. Adopted amendments at subsection (c) delete the reference to a "registry" because in Texas today, not all immunization registries are owned by a state or local health department, and further private registries may emerge in the future. Currently, the Health and Safety Code does not acknowledge these private registries in this context, or make them equivalent to those it does reference which are owned by the state or local health departments. Adopted amendments to subsection (d) explicitly state that the referenced record must be an "official" record, and also revise the rule text for better readability.

Section 97.69.

The adopted amendments to §97.69 revise the section title for clarity.

Section 97.70.

The adopted amendments to §97.70 revise the section title for clarity and to improve readability. Additionally, §97.70 is amended to reflect the department's ability to view identified immunization records under the Texas Health and Safety Code and other law, and also to better state the purpose of the reviews in question. The adopted changes also improve readability.

Section 97.71.

The adopted amendments to §97.71 revise the section title for clarity.

Section 97.72.

The adopted amendments to §97.72 are made in order to clearly and accurately provide a cross-reference to statutory authority under which the department and/or a local health authority may require additional doses of vaccinations, beyond those contained in these rule sections, when circumstances warrant. The Texas Health and Safety Code, Chapter 81, Subchapter E establishes the statutory scheme where the state and local health authorities can issue control orders to prevent the spread of disease and protect the public health. Under this statutory scheme, the local health authority takes the lead role, but can be preempted by the department. The department can also initiate these actions on its own initiative. The adopted changes are bet-

ter reflective of current statutory authority than the current rule language.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to comments received from 20 commenters during the official comment period regarding the proposed rules. The commenters were public health workers and entities, trade associations, advocacy groups, and/or concerned citizens.

Commenters who were in support of the rules in their entirety included the following: Texas Medical Association, Texas Academy of Family Physicians, Texas Pediatric Society--Texas Chapter of the American Academy of Pediatrics, Harris County Public Health and Environmental Services, and Houston Area Immunization Partnership.

Commenters who were somewhat supportive of the rules, but who included suggested recommendations for change as discussed in the summary of comments, include the following: University of Mary Hardin-Baylor, Gregg County Health Department, Grayson County Health Department, Wills Point High School, Ereckson Middle School, Garland ISD, Marshall ISD, Pharr-San Juan-Alamo ISD, Amarillo College, Alamo Community Colleges, Navarro College, Texas Administrators of Continuing Education (TACE), and Trinity Valley Community College. The department responses to these suggestions are given below, at each rule.

Commenters who were against the rules in their entirety included two concerned citizens who felt that no new immunization requirements were needed. One commenter gave no reasons for that position, but the second commenter suggested that anything that might reduce enrollment should not be done, and claimed that new immunization regulations aren't needed for "non-lethal" diseases. The second commenter went on to claim that some schools do not follow department regulations regarding provisional enrollment. This commenter goes on to claim that the agency's real motives in passing immunization requirements are to help vaccine manufacturers profit from the resulting sales. This commenter finishes by saying that the state should stay out of the issue of immunizations for school entry altogether and leave it to be handled by "doctors and persons that have the back ground and education to interpret such decisions and to be done so on a case by case basis."

Response: The commission disagrees. These rule amendments are based on the recommendations of the CDC and the ACIP, which have the full approval of the American Academy of Pediatrics, the American Medical Association, and the American Academy of Family Physicians. The department also worked with stakeholders prior to submitting these amendments for consideration. Stakeholders included physicians and nurses, and the general public through a public meeting. All of the following entities fully support these rule amendments: Texas Medical Association, Texas Academy of Family Physicians, Texas Pediatric Society-Texas Chapter of the American Academy of Pediatrics, Harris County Public Health and Environmental Services, and Houston Area Immunization Partnership, thus demonstrating a realization that the state needs comprehensive and consistent requirements as opposed to any "case-by-case" approach as advocated by the commenter. Vaccine requirements are appropriate measures to prevent and control disease outbreaks and are beneficial to the public health. Vaccines help prevent infectious diseases and save lives. Vaccines are responsible for the control of many infectious diseases that were once common in this country, including polio, measles, diphtheria, pertussis

(whooping cough), rubella (German measles), mumps, tetanus, and *Haemophilus influenzae* type b (Hib). A recent study that examined birth cohorts who were given seven different childhood vaccines (DTaP, Td, Hib, Polio, MMR, hepatitis B, and varicella) found that nearly 33,000 lives are saved and approximately 14 million cases of disease are prevented for each birth cohort. This refutes the commenter's claim regarding "non-lethal" diseases. The adopted amendments are authorized by Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004 which allows the department to adopt rules for the effective administration of the Communicable Disease Act; and §161.004 and §161.0041 regarding statewide immunization of children and associated logistics; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

No change was made to the rule as a result of this comment.

Comments concerning §97.63:

Comment: Concerning §97.63, one commenter stated concern regarding those children that will arrive at school on the first day of their kindergarten and/or 7th grade years who may not have the proposed vaccines. The commenter expressed concern regarding whether these children will be kept out of school until the proposed vaccines are administered.

Response: While it is true that any immunization requirement could possibly result in children being kept out of school until proof of the required vaccines is provided, the department notes the availability of exceptions under §97.65, the provisions of Health and Safety Code, §161.004, and provisional enrollment under §97.66. No change was made to the rule as a result of this comment.

Comment: Concerning §97.63(2), one commenter suggested changing the rule language, "A child or student shall show acceptable evidence of vaccination prior, for diseases listed below, to entry, attendance or transfer..." to the following for the purpose of clarity: "For diseases listed below, a child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer."

Response: The commission agrees because changing the rule language from "A child or student shall show acceptable evidence of vaccination prior, for diseases listed below, to entry, attendance or transfer..." to "For diseases listed below, a child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer..." improves rule clarity. A change was made to the rule as a result of this comment.

Comment: Concerning §97.63(2)(B)(i)(I), one commenter stated that the rule language does not take into account the "recommended immunization schedule for persons aged 7 - 18 years - United States, 2008," which specifies that the three dose schedule only applies to all (inactivated poliovirus vaccine) IPV or all (oral poliovirus vaccine) OPV (<http://www.cdc.gov/mmwr/PDF/wk/mm5701-Immunization.pdf>, footnote 8), series.

Response: The commission disagrees with the comment. According to the CDC, all children should receive four doses of IPV at ages 6 - 18 months, 2 years old, 4 years old, and 4 - 6 years

old. For more information, please refer to the following: "Polio Myelitis Prevention in the United States: Recommendations of the Advisory Committee on Immunization Practices (ACIP), MMWR 2000, 49 (No. RR-5), pp. 10 - 12." No change was made to the rule as a result of this comment.

Comment: Concerning §97.63(2)(B)(i)(I), one commenter suggested that the rule language, "If any combination of four doses of OPV and IPV was received before four years of age, no additional dose is required" is not an accurate representation of the "recommended immunization schedule for persons aged 7 - 18 years - United States, 2008," which states in the footnotes that "If both OPV and IPV were administered as part of a series, a total of four doses should be administered, regardless of the child's current age." It does not specify that the doses were received before four years of age.

Response: The commission agrees that the language could be clearer, and so the rule language is amended to improve clarity in order to better represent the intent of the recommendations provided by the CDC's ACIP. A change was made to the rule as a result of this comment.

Comment: Concerning §97.63(2)(B)(ii)(I), one commenter suggested that rule language, "Students are required to have five doses of a diphtheria/tetanus/pertussis-containing vaccine - one of which must have been received on or after the fourth birthday. Or, if the fourth dose was administered on or after the fourth birthday, only four doses are required..." be clarified to state the following: "Students are required to have four doses (five doses preferred) of a diphtheria/tetanus/pertussis-containing vaccine, one of which must have been received on or after the fourth birthday."

Response: The commission disagrees with the specific suggested change because the department believes the current language is clear and reflects the five doses of diphtheria/tetanus/pertussis-containing vaccine that are required. However, the title "Kindergarten entry" has been added.

Comment: Concerning §97.63(2)(B)(ii)(III), four commenters stated that the rule language "Beginning school year (SY) 2009 - 2010, students will be required to have one booster dose of a tetanus/diphtheria/pertussis-containing vaccine for entry into 7th grade..." is not clear for a progressive schedule for implementation for students who are in the 8th grade through 12th grade.

Response: The commission agrees. Four commenters expressed concern regarding the Tdap rule for students in grades 8 - 12. The comments included suggested text to include students in grades 8 - 12. The department agrees that the proposed rule language is unclear for the requirement of a tetanus/diphtheria/pertussis-containing booster dose for students in grades 8 - 12. Therefore, the rule has been revised to address those concerns expressed by stakeholders. A change was made to the rule in order to provide more clarity concerning the intent of the rule and better articulate the requirements regarding those students in grades 8 - 12 that would not meet the 7th grade requirement at the time of implementation.

Comment: Concerning §97.63(2)(B)(ii)(III), three commenters expressed concern about the rule language as it pertains to the suggestion that a 7th grade requirement for Tdap would not be 10 years from the previous dose as the 7th grade is sooner than 10 years.

Response: The commission disagrees. The proposed rule language states that students will be required to have one booster dose of a tetanus/diphtheria/pertussis-containing vaccine for entry into the 7th grade, if at least five years have passed since the last dose of a tetanus-containing vaccine. If the five years have not elapsed since the last dose of a tetanus-containing vaccine at entry into the 7th grade, then this dose will become due as soon as the five year interval has passed. Therefore, the proposed rule includes a five-year interval, not a ten-year interval. No change was made to the rule as a result of these comments.

Comment: Concerning §97.63(2)(B)(ii)(III), one commenter argues that since meningitis peaks at 15 - 24 years of age and MCV4 has a ten year coverage span, the vaccine should be administered in conjunction with Tdap at the 14 - 15 year old range. According to the commenter, this would cover the child through age 24. Likewise, the commenter continues, giving MCV4 at 11 - 12 years would last through 21 years and leave three years with potentially decreased immunity which would require the parent to bring the child in only once versus at 11 - 12 years old (i.e., 7th grade) for MCV4 and again at 14 - 15 years old for Tdap.

Response: The commission disagrees. Both Tdap and meningococcal vaccines are proposed to be required in the 7th grade, which is in alignment with the current ACIP recommendation for an adolescent health visit at 11 - 12 years of age. The parent will only need to take the child for one adolescent health visit; thus, both vaccines may be administered within the appropriate recommended timeframes. No change was made to the rule as a result of this comment.

Comment: Concerning §97.63(2)(B)(iii), one commenter suggested that the rule language, "Students are required to have two doses of MMR vaccine upon kindergarten entry for the following grades and school years...(schedule follows.)" should be changed to reflect a two dose requirement at both kindergarten and 7th grade entry for the following reasons: (a) The commenter states that students most at risk for mumps and rubella are older students whose antibodies have waned over a period of 10 - 12 years since their first MMR; (b) commenter claims the availability of the combined MMR-varicella vaccine makes it logical to align the requirements for both vaccines; (c) commenter argues that the small number of older students needing their second MMR would not impact the vaccine supply; and (d) commenter asserts that parallel schedules for MMR and varicella vaccines would simplify the programming of school computer systems and would increase the efficiency of the school nurse.

Response: The commission disagrees. The purpose of these rule amendments is to bring them more into line with the CDC/ACIP medical recommendations. The recommendation for MMR vaccine is that it is to be given at one year of age and again at 4 - 6 years of age. The availability of a combination vaccine is not a sound basis for the timing of a vaccine requirement. In addition, the combination vaccine, MMR-varicella, has not been available for approximately a year due to manufacturing issues.

Comment: Concerning §97.63(2)(B)(iii)(II), one commenter suggested that rule language, "Students are required to have two doses of MMR vaccine...for the following grades and school years (The first dose shall be administered on or after the first birthday):" be changed to the following for the purpose of clarity: "Students are required to have two doses of MMR vaccine with the first dose received on or after the first birthday for the following grades and school years:"

Response: The commission agrees because changing the rule language from "Students are required to have two doses of MMR vaccine...for the following grades and school years (The first dose shall be administered on or after the first birthday):" to "Students are required to have two doses of MMR vaccine with the first dose received on or after the first birthday for the following grades and school years:" improves rule clarity. A change was made to the rule as a result of this comment, within the context of the slight reorganization of the provision at issue within the rule (see discussion above).

Comment: Concerning §97.63(2)(B)(iii)(II), one commenter suggested that the rule language, "upon kindergarten entry" could be deleted for the purpose of clarity.

Response: The commission agrees. The wording "upon kindergarten entry" was deleted as the requirements affect all grades. A change was made to the rule for the purpose of clarity as a result of this comment, within the context of the slight reorganization of the provision at issue within the rule (see discussion above).

Comment: Concerning §97.63(2)(B)(iii)(I) - (XIII), (2)(B)(v)(I) - (VII), (2)(B)(vi)(I) - (XIII), and (2)(B)(vii)(I) - (VI), one commenter suggested that these sections would be more rapidly interpreted by users and less cumbersome if the grades were listed, where applicable, as K - 2; K - 3; K - 2, 7 - 9; K - 3, 7 - 10; etc.

Response: The commission agrees. For the purpose of clarity and improved readability, the grades listed in these provisions are amended pursuant to the comment.

Comment: Concerning §97.63(2)(B)(iv)(I), one commenter stated that the rule language, "Students are required to have three doses of hepatitis B vaccine upon entry into kindergarten" seems to suggest that only students entering kindergarten are required to have hepatitis B vaccine, and students entering school at older grade levels are not required to have it. No other vaccine that is required at all grade levels contains the wording "upon entry into kindergarten." The commenter argues that replacing the wording with this statement "Students are required to have three doses of hepatitis B vaccine" would be clearer.

Response: The commission disagrees with the comment because removing the statement "upon entry into kindergarten" would be confusing-it would leave open a possible interpretation that, in the absence of a specific schedule for this immunization, a child could simply wait until the last grade that is covered by this rule section, 12th grade, to satisfy the requirement. And that would be counter to the intent of the rule. Under the wording adopted by the commission, a child must meet the requirement by the time stated, and if the child does not, then the child will have to catch up prior to enrollment. However, the phrase "no later than" has been added in order to further clarify the schedule.

Comment: Concerning §97.63(2)(B)(v), one commenter stated that the language in the rule text is inconsistent with the language in the rule preamble regarding varicella vaccine. On the highlight of proposed revisions under varicella vaccine, the rule language states that "beginning school year (SY) 2009 - 2010, two dose requirement for kindergarten and 7th grade entry"; however, language contained in the preamble under the section-by-section summary, §97.63(2)(B)(v)(II), only includes kindergarten entry.

Response: The commission agrees and has slightly reorganized the rule text, and has revised the preamble language to better describe the rule language at issue.

Comment: Concerning §97.63(2)(B)(vi), one commenter suggested that rule language, "Students are required to have two doses of hepatitis A vaccine for the following grades and school years (The first dose shall be administered on or after the first birthday):" be changed to the following for the purpose of clarity: "Students are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday for the following grades and school years:"

Response: The commission agrees. Adding "Students are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday for the following grades and school years:" to the rule language improves clarity and readability. A change has been made in response to this comment, within the context of the slight reorganization of the provision at issue within the rule (see discussion above).

Comment: Concerning §97.63(2)(B)(vi), one commenter stated that all children across the state should be vaccinated against hepatitis A. While the rule language requires two doses of hepatitis A vaccine for children in grades kindergarten through 3rd grade in high incidence geographic areas, the rule language only requires two hepatitis A vaccinations for remainder of the children across the state who would be attending in 2009 - 2010 school years. As a result, there will be children in other grades who will not be vaccinated. Therefore, the rule language should be changed to require that all children statewide in every school grade should be vaccinated against hepatitis A.

Response: The commission disagrees with the comment. The adopted rule language states that two doses of hepatitis A vaccine will be required over an incremental timeframe beginning with kindergarten in SY 2009 - 2010 and ending with grade 12 in SY 2021 - 2022. As a result, by the year 2021, all children in every grade will be required to have two doses of hepatitis A vaccine. From a practical standpoint, it is not feasible to require two doses of hepatitis A vaccine for every student in every grade at one time. Instead, the department places emphasis on students in grades with the highest incidence of disease for the first year. No change was made to the rule as a result of this comment.

Comment: Concerning §97.63(2)(B)(vii), one commenter perceives a contradiction between the language of the rule as proposed and the way the rule is described elsewhere. The commenter asserts that the rule language states, "Students are required to have one dose of meningococcal vaccine for the following grades and school years." Yet, in the earlier section of "Highlights of Proposed Revisions," it states that a new meningococcal vaccine (MCV4, Menactra) was licensed for use among individuals, ages 11 - 55 years, in January 2005. It is unclear (the commenter continues) if students who received the meningococcal polysaccharide vaccine (MPSV, Metamune) at an early age will meet the requirements of this section or if these students need to be reimmunized with the currently available vaccine.

Response: The commission disagrees with the comment. The section of "Highlights of Proposed Revisions" lays out the reasoning for the rule change and includes information about the vaccine's licensure. The fact that the new vaccine was licensed and recommended for routine use was a necessary factor before a requirement for vaccination against meningococcal disease could be considered. The previous vaccine that has been in use for a number of years, MPSV4, was not routinely recommended--this vaccine has been used only for high-risk children and outbreak control measures. The new vaccine carries a routine recommendation for individuals 11 - 55 years of age. The issue of revaccination is not an issue for this rule. The vaccina-

tion history of a child is not at issue because this rule requires vaccination against meningococcal disease prior to entry to the 7th grade. The rule does not specify which vaccine must be used and does not address the detail of revaccination. The reason that revaccination is not covered in this rule is due to the fact that a very small number of children need revaccination, while the overwhelming majority of children will receive their initial dose as they enter the 7th grade. No change was made to the rule as a result of this comment.

Comment: Concerning §97.63(2)(B)(vii), one commenter expressed concern regarding the cost of the meningococcal vaccine.

Response: The commission is confident that most required vaccinations will be covered under health insurance plans in Texas. However, if a student is uninsured or underinsured, the student may qualify for the Texas Vaccines for Children (TVFC) program. Under the TVFC program, children up to age 18 are eligible for free or discounted vaccines. The department will monitor the situation regarding the new meningococcal vaccine and the effects of cost upon the ability to ultimately comply with the requirement, and will consider proposing rule amendments if the department comes to believe that the situation warrants. No change was made to the rule as a result of this comment.

Comments concerning §97.64:

Comment: Concerning §97.64(a), one commenter stated that it appears, but is not clear, that the guidelines are divided into sections for "Health-related" and "Veterinary" students, with different guidelines for each type of student. The commenter recommended that §97.64(a) be renamed "Students enrolled in health-related courses" to be more consistent with the title of §97.64(d).

Response: The commission agrees that the title could be clearer, and thus §97.64(a) is renamed to "Students enrolled in (non-veterinary) health-related courses" in order to improve rule clarity and readability by differentiating between health-related and veterinary students.

Comment: Concerning §97.64, for the purpose of clarity, one commenter recommended that the §97.64(b) should be a subsection of §97.64(a).

Response: The commission disagrees with the comment since, according to the guidelines established by the *Texas Register* concerning rule section structures; there must be at least two designations in a subdivision. By making §97.64(b) a subsection of §97.64(a), the result would be only one designation in the subdivision. Further, the commission believes that the rule structure is clear and readable as adopted. No change was made to the rule as a result of this comment.

Comment: Concerning §97.64, one commenter stated that it is not clear if subsection (c) refers to both types of students (i.e., health-related and veterinary).

Response: The commission agrees that the applicability of subsection (c) to both types of students could be more clearly stated, and thus has revised subsection (c)(1) - (2) to better link to subsection (d).

Comment: Concerning §97.64(a), two commenters stated that the proposed amendment to the rule language specifying what healthcare students are covered by the rules remains insufficient to protect the entire healthcare student population. Healthcare programs (i.e. Nurse Aide, EMT-Basic) provided by institutions not traditionally categorized as "higher education" (i.e. nursing

homes, career schools, private training centers) can be interpreted as not being covered by the immunization rules. Community and junior colleges are traditionally considered to be institutions of "higher education" and are clearly covered by the immunization rules. Given that the department has no authority to "police" compliance with the rules, the intent of the rules to protect the public is being applied inequitably across the state.

Response: The commission disagrees with this comment since Education Code, §51.933, provides that the department require immunizations for certain diseases and any additional diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession. Institutions which are not legally considered "institutions of higher education" do not fall under the scope of the law; therefore, the department cannot address the concern via the adopted rule. The department would not be protecting the public health if it failed to establish vaccination requirements for those institutions it can regulate simply because there are other institutions it cannot regulate under Texas law. No change was made to the rule as a result of this comment.

Comment: Concerning §97.64, one commenter suggested that instead of changing paragraph (a) of §97.64 to a generic statement indicating the rule applies to "higher education programs," it seems more clear to specify the variety of types of programs that provide health care training courses which involve direct patient care.

Response: The commission disagrees. Previous rule language specified different types of programs that provide health care training; however, various stakeholders have voiced concerns regarding the perceived applicability of the rule to only the specified programs listed. Therefore, in order to avoid such confusion, the adopted rule language was written to encompass all students enrolled in health-related higher education courses (i.e., "institutions of higher education") which will involve direct patient contact with potential exposure to blood or bodily fluids in educational, medical, or dental care facilities. Thus, the adopted language allows for a broad range of programs with the possibility of direct patient contact with potential exposure to blood or bodily fluids. No change was made to the rule as a result of this comment.

Comment: Concerning §97.64(b)(3) and (c), five commenters expressed concerns regarding the time-frame for completing the hepatitis B vaccine series. The commenters stated that the time-frame does not allow for students to complete the required series before beginning direct patient care, if those students have not planned ahead sufficiently to have completed the series prior to enrollment. As a result, students at that point are unable to comply and therefore unable to enroll in various programs (because the direct patient contact begins soon after enrollment). The commenters argue that, as a result the health care programs are suffering with decreased enrollment with a commensurate impact on the state's health care workforce. Various commenters suggested modifying the provisional enrollment rule to allow students to enroll and begin direct patient care with one dose, then completing the remaining doses as the class continues.

Response: While the commission realizes that completion of the three-dose hepatitis B series prior to direct patient care, as stipulated in our rule, may impact class enrollments and perhaps also impact health care workforce, the commission believes that the public health necessity outweighs these concerns. The rule is reflective of the federal "Immunization of Health-Care Workers: Recommendations of the Advisory Committee of Immu-

nization Practices (ACIP)" and the "Hospital Infection Control Practices Advisory Committee (HICPAC)." These recommendations state that among health-care professionals, risks for percutaneous and permucosal exposures to blood vary during the training and working career of each person but are often highest during the professional training period. Therefore, vaccination should be completed during training in schools of medicine, dentistry, nursing, laboratory technology, and other allied health professions, before trainees have contact with blood. The department is sensitive to this issue, and has in the past worked with the Texas Higher Education Coordinating Board (THECB) and others to increase awareness of this long-standing requirement so that fewer students find themselves unprepared at the moment of enrollment. The department remains committed to working with stakeholders to get the word out about this requirement. No change was made as a result of the comments.

Comment: Concerning §97.64, one commenter argues that this immunization requirement remains more stringent than the Occupational Safety and Health Administration (OSHA) rules for healthcare professions in the clinical setting. Commenter states that OSHA requires that immunizations be started within 10 days of employment thereby allowing for direct patient contact to occur before the Hepatitis B series is completed. Commenter claims that reports from Texas community colleges continue to include comments from their local healthcare industry partners as to why the state and OSHA requirements differ, and how the more stringent state immunization requirements continue to hamper the education and training of sufficient numbers of entry-level healthcare workers.

Response: The commission disagrees. Employers who have employees with reasonably anticipated exposure to blood or other potentially infectious material (OPIM) are required to provide the hepatitis B vaccination series at no cost to the employee (29 CFR §1910.1030(f)(2)(ii)). The vaccination series must be provided in accordance with the recommendations of the U.S. Public Health Service current at the time of the vaccination (29 CFR §1910.1030(f)(1)(ii)(D)). The OSHA requirements also include training, such as information on the hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge, and post-exposure evaluation. Thus, the OSHA requirements encompass more than the state requirements, which only stipulate vaccination of the student. The rule is reflective of the "Immunization of Health-Care Workers: Recommendations of the Advisory Committee of Immunization Practices (ACIP) and the Hospital Infection Control Practices Advisory Committee (HICPAC)", which call for vaccination of hepatitis B to be completed during training in schools of medicine, dentistry, nursing, laboratory technology, and other allied health professions, before direct patient contact as described in subsection (a). The department appropriately looks to CDC for public health recommendations, as opposed to OSHA. The CDCs are the public health experts in the federal government on these matters. No change was made to the rule as a result of this comment.

Comment: Concerning §97.64, one commenter stated that many community college students are "non-traditional students" choosing to enroll in entry-level healthcare programs later in life as a change in career, or as a first attempt at a college education. Many of these adults do not have the hepatitis B vaccine as part of childhood immunizations, and no longer have access to their immunization records to show as proof of the other required immunizations. These students face a confusing

and time consuming process as they obtain new immunizations or serologic confirmation of immunity.

Response: Although the commission understands the challenges that adult students face in obtaining vaccinations and showing proof of such vaccinations, the commission believes the public health necessity for these required vaccinations outweighs the hurdles that students must face in order to show proof of vaccination. The department is committed to providing a safety net of vaccines, at no cost or low cost, to adults. The department is working with the THECB in identifying geographical areas in Texas where access to vaccinations is needed. Both agencies will provide information about clinic locations, hours of operation, and available vaccines for adults to all colleges that fall under the scope of THECB. Information will be mailed to all listed institutions as well as availability on both agencies websites. In addition to these issues of access and cost, the department continues to believe that effective outreach by the various institutions is the most effective way to get the word out about the vaccination requirements so the associated timeframes can be taken into account by potential students. No change was made to the rule as a result of this comment.

Comment: Concerning §97.64, one commenter claimed that reports continue from around the state that some healthcare providers are refusing to administer the 3rd hepatitis B injection, questioning the medical necessity, leaving the student unable to complete the series as required.

Response: Although the department has not been able to independently verify any such instances, it remains committed to work with healthcare providers in Texas to educate them about appropriate vaccination schedules, including hepatitis B vaccine. The Texas Vaccines for Children providers, as well as public health clinics, adhere to the standards of immunization practices which include, but are not limited to: making vaccinations available; administering and documenting vaccinations appropriately; and working with those in the community to increase awareness of vaccine requirements. No change was made to the rule as a result of this comment.

Comment: Concerning §97.64, one commenter argues that college staff (faculty and non-faculty staff) continue to be responsible for "interpreting" immunization records submitted by students, including detailed laboratory data from titers for students that don't have original immunization records available. Many colleges do not have the resources to maintain properly trained staff with the medical background to interpret such documents.

Response: The commission recognizes the challenges in enforcing the immunization requirements in childcare facilities, schools, and institutions of higher education. The department offers educational tools online at www.immunizetexas.com to understand the rules as well as operating a toll-free number to provide technical assistance at (800) 252-9152. It should be noted that while the entities that enforce the immunization requirements are the enforcers, these entities are not expected to interpret immunization records or laboratory data. The department is ready to assist with this type of review of records. Regional and local health departments also serve as a community resource for this purpose as well. The concerns expressed in this comment do not outweigh the public health concerns addressed by the requirement at issue, for all the reasons stated herein. No change was made in response to this comment.

Comment: Concerning §97.64(a), two commenters claim that the financial burden associated with obtaining the required im-

munizations or laboratory titers prevents many students from applying to healthcare programs at institutions that enforce the immunization rules. College financial aid programs will not pay for vaccinations or titers. Although local health departments now have the authority to offer the required vaccinations at low or no cost to adult healthcare students, many areas of Texas report that this service is not being offered consistently across communities. This frequently leaves the financial burden on the student. At times, the cost of all required immunizations (not only Hepatitis B) is higher than the actual cost of tuition/fees for the short-term healthcare program.

Response: While the commission realizes that this rule may have a financial burden for students, the public health necessity outweighs the financial barriers that students face. The department and THECB are working together to ensure that students and colleges are made aware of the adult vaccine safety-net program offered by the department, which provides vaccines at a low or discounted price to eligible students throughout the state. Additionally, both agencies will work with individual colleges by providing information about the possibility of purchasing vaccine for their students at the state-contracted price. No change was made to the rule as a result of this comment.

Comment: One commenter was generally supportive of the entire rule as proposed, but expressed a wish that Texas would require "meningitis vaccinations for college if not received prior to admittance," citing the availability of reduced-priced shots at county health departments.

Response: According to the Education Code, §51.933, subsection (b), "the Texas Board of Health may require immunizations against the diseases listed in subsection (a) and additional diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession"; therefore, the department does not have the authority to establish immunization requirements for all students attending institutions of higher education. No change was made as a result of the comment.

Comment concerning §97.65:

Comment: Concerning §97.65, one commenter suggested deleting the rule language, "or varicella illnesses" in §97.65(a) for the purpose of clarity since the requirement in §97.65(a) that the "Evidence of...varicella illnesses must consist of a valid laboratory report..." seems to be contraindicated by the statement in §97.65(b) that a written statement is acceptable for evidence of varicella disease or immunity.

Response: The commission disagrees because a valid laboratory report indicating confirmation of either immunity or infection is acceptable; or, for varicella illness only, a written statement from the parent/guardian, physician, or school nurse is also acceptable. No change was made to the rule as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted amendments are authorized by Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004 which allows the

department to adopt rules for the effective administration of the Communicable Disease Act; and §161.004 and §161.0041 regarding statewide immunization of children and associated logistics; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§97.63. Immunization Requirements in Texas Elementary and Secondary Schools.

Every child in the state shall be vaccinated against vaccine-preventable diseases caused by infectious agents, in accordance with the following immunization schedule.

(1) A vaccine administered up to four days prior to the deadline for that vaccine in the department Immunization Schedule, §97.221 of this title (relating to Department of State Health Services Immunization Schedule) and in the schedules in this section, are considered compliant with that deadline.

(2) For diseases listed below, a child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer to a child-care facility or public or private elementary or secondary school.

(A) Children enrolled in child-care facilities, pre-kindergarten, or early childhood programs shall have the following immunizations (at the ages indicated) against: diphtheria, pertussis, tetanus, poliomyelitis, *Haemophilus influenzae* type b (Hib), measles, mumps, rubella, hepatitis B, hepatitis A, invasive pneumococcal, and varicella diseases in accordance with the department Immunization Schedule, §97.221 of this title. A copy of the current schedule is available at www.ImmunizeTexas.com or by mail to the Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347.

(B) Students in kindergarten through twelfth grade shall have the following vaccines, according to the schedule listed.

(i) Poliomyelitis.

(I) Kindergarten entry. Students are required to have four doses of polio vaccine--one of which must have been received on or after the fourth birthday. Or, if the third dose was administered on or after the fourth birthday, only three doses are required. Four doses of oral polio vaccine (OPV) or inactivated poliovirus vaccine (IPV) in any combination by age four to six years old is considered a complete series, regardless of age at the time of the third dose.

(II) Polio vaccine is not required for persons eighteen years of age or older.

(ii) Diphtheria/Tetanus/Pertussis.

(I) Kindergarten entry. Students are required to have five doses of a diphtheria/tetanus/pertussis-containing vaccine--one of which must have been received on or after the fourth birthday. Or, if the fourth dose was administered on or after the fourth birthday, only four doses are required.

(II) Students seven years of age or older. Students seven years of age or older are required to have at least three doses of a tetanus/diphtheria-containing vaccine, provided at least one dose was administered on or after the fourth birthday. Any combination of three doses of a tetanus/diphtheria-containing vaccine will meet this requirement.

(III) Tdap.

(-a-) For the school year (SY) 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, students are required to have one dose of a tetanus/diphtheria-containing vaccine within the last ten years.

(-b-) Seventh grade. Beginning SY 2009 - 2010, students will be required to have one booster dose of a tetanus/diphtheria/pertussis-containing vaccine for entry into the 7th grade, if at least five years have passed since the last dose of a tetanus-containing vaccine. If five years have not elapsed since the last dose of a tetanus-containing vaccine at entry into the 7th grade, then this dose will become due as soon as the five-year interval has passed. Td vaccine is an acceptable substitute, if Tdap vaccine is medically contraindicated.

(-c-) Grades 8 - 12. Beginning SY 2009 - 2010, students who have not already received Tdap vaccine are required to receive one booster dose of Tdap when ten years have passed since the last dose of a tetanus-diphtheria-containing vaccine.

(IV) Children who were enrolled in school, grades K - 12, prior to August 1, 2004, and who received a booster dose of DTaP or polio vaccine in the calendar month of (or prior to) their fourth birthday, shall be considered in compliance with clause (i)(I) (polio) and clause (ii)(I) (DTaP) of this subparagraph.

(iii) MMR.

(I) For the SY 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, students are required to have two doses of a measles-containing vaccine, and one dose each of rubella vaccine and mumps vaccine.

(II) Beginning SY 2009 - 2010, students are required to have two doses of MMR vaccine with the first dose received on or after the first birthday for the following grades and school years:

- (-a-) SY 2009 - 2010: K;
- (-b-) SY 2010 - 2011: K - 1;
- (-c-) SY 2011 - 2012: K - 2;
- (-d-) SY 2012 - 2013: K - 3;
- (-e-) SY 2013 - 2014: K - 4;
- (-f-) SY 2014 - 2015: K - 5;
- (-g-) SY 2015 - 2016: K - 6;
- (-h-) SY 2016 - 2017: K - 7;
- (-i-) SY 2017 - 2018: K - 8;
- (-j-) SY 2018 - 2019: K - 9;
- (-k-) SY 2019 - 2020: K - 10;
- (-l-) SY 2020 - 2021: K - 11; and
- (-m-) SY 2021 - 2022: K - 12.

(iv) Hepatitis B.

(I) Students are required to have three doses of hepatitis B vaccine no later than entry into kindergarten.

(II) In some circumstances, the United States Food and Drug Administration may officially approve in writing the use of an alternative dosage schedule for this vaccine. Such an alternative regimen may be used to meet the requirements under this section only when alternative regimens are fully documented. Such documentation must include vaccine manufacturer and dosage received for each dose of that vaccine.

(v) Varicella.

(I) For the SY 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, students are required to have one dose of varicella vaccine received on or after the first birthday for grades K - 12.

(II) Beginning SY 2009 - 2010, students are required to have two doses of varicella vaccine received on or after the first birthday for the following grades and school years (Two doses are required if the child was thirteen years old or older at the time the first dose of varicella vaccine was received):

- (-a-) SY 2009 - 2010: K, 7;
- (-b-) SY 2010 - 2011: K - 1, 7 - 8;
- (-c-) SY 2011 - 2012: K - 2, 7 - 9;
- (-d-) SY 2012 - 2013: K - 3, 7 - 10;
- (-e-) SY 2013 - 2014: K - 4, 7 - 11;
- (-f-) SY 2014 - 2015: K - 5, 7 - 12; and
- (-g-) SY 2015 - 2016: K - 12.

(vi) Hepatitis A.

(I) For the SY 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, upon entry into kindergarten through third grade, two doses of hepatitis A vaccine are required for students attending a school located in a high incidence geographic area as designated by the department. The first dose shall be administered on or after the second birthday. A list of geographic areas, for which hepatitis A is mandated for this time period, is available at www.ImmunizeTexas.com, or by mail request at Department of State Health Services, P.O. Box 149347, Austin Texas 78714-9347.

(II) For SY 2009 - 2010, students are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday for the following grades and school years:

- (-a-) SY 2009 - 2010: K;
- (-b-) SY 2010 - 2011: K - 1;
- (-c-) SY 2011 - 2012: K - 2;
- (-d-) SY 2012 - 2013: K - 3;
- (-e-) SY 2013 - 2014: K - 4;
- (-f-) SY 2014 - 2015: K - 5;
- (-g-) SY 2015 - 2016: K - 6;
- (-h-) SY 2016 - 2017: K - 7;
- (-i-) SY 2017 - 2018: K - 8;
- (-j-) SY 2018 - 2019: K - 9;
- (-k-) SY 2019 - 2020: K - 10;
- (-l-) SY 2020 - 2021: K - 11; and
- (-m-) SY 2021 - 2022: K - 12.

(vii) Meningococcal. Students are required to have one dose of meningococcal vaccine for the following grades and school years:

- (I) SY 2009 - 2010: 7;
- (II) SY 2010 - 2011: 7 - 8;
- (III) SY 2011 - 2012: 7 - 9;
- (IV) SY 2012 - 2013: 7 - 10;
- (V) SY 2013 - 2014: 7 - 11; and
- (VI) SY 2014 - 2015: 7 - 12.

§97.64. Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

(a) Students enrolled in (non-veterinary) health-related courses. This section applies to all students enrolled in health-related higher education courses which will involve direct patient contact with potential exposure to blood or bodily fluids in educational, medical, or dental care facilities.

(b) Vaccines Required. Students must have the all the following vaccinations before they may engage in the course activities described in subsection (a) of this section:

(1) Tetanus-diphtheria. One dose of a tetanus-diphtheria toxoid (Td) is required within the last ten years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap).

(2) Measles, Mumps, and Rubella Vaccines.

(A) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses of a measles-containing vaccine administered since January 1, 1968 (preferably MMR vaccine).

(B) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of one dose of a mumps vaccine.

(C) Students must show, prior to patient contact, acceptable evidence of one dose of rubella vaccine.

(3) Hepatitis B Vaccine. Students are required to receive a complete series of hepatitis B vaccine prior to the start of direct patient care or show serologic confirmation of immunity to hepatitis B virus.

(4) Varicella Vaccine. Students are required to have received one dose of varicella (chickenpox) vaccine on or after the student's first birthday or, if the first dose was administered on or after the student's thirteenth birthday, two doses of varicella (chickenpox) vaccine are required.

(c) Limited Exceptions:

(1) Notwithstanding the other requirements in this section, a student may be provisionally enrolled in these courses if the student has received at least one dose of each specified vaccine prior to enrollment and goes on to complete each vaccination series on schedule in accordance with the Centers for Disease Control and Prevention's Recommended Adult Immunization Schedule as approved by the Advisory Committee on Immunization Practices (ACIP), American College of Obstetricians and Gynecologists (ACOG), the American Academy of Family Physicians (AAFP), and the American College of Physicians. However, the provisionally enrolled student may not participate in coursework activities involving the contact described in subsections (a) and/or (d) of this section until the full vaccination series has been administered.

(2) Students, who claim to have had the complete series of a required vaccination, but have not properly documented them, cannot participate in coursework activities involving the contact described in subsections (a) and/or (d) of this section until such time as proper documentation has been submitted and accepted.

(3) The immunization requirements in subsections (b) and (d) of this section are not applicable to individuals who can properly demonstrate proof of serological confirmation of immunity. Vaccines for which this may be potentially demonstrated, and acceptable methods for demonstration, are found in §97.65 of this title (relating to Exceptions to Immunization Requirements (Verification of Immunity/History of Illness)). Such a student cannot participate in coursework activities involving the contact described in subsection (a) of this section until such time as proper documentation has been submitted and accepted.

(d) Students enrolled in schools of veterinary medicine.

(1) Rabies Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete primary series of rabies vaccine prior to such contact. Serum antibody levels must be checked every two years, with a booster dose of rabies vaccine administered if the

titer is inadequate according to current Centers for Disease Control and Prevention guidance.

(2) Hepatitis B Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete series of Hepatitis B vaccine prior to such contact.

(e) Requirements regarding acceptable evidence of vaccination are found at §97.68 of this title (relating to Acceptable Evidence of Vaccination(s)).

§97.66. *Provisional Enrollment for (Non-Higher Education; Non-Veterinary) Students.*

(a) The law requires that students be fully vaccinated against the specified diseases. A student may be enrolled provisionally if the student has an immunization record that indicates the student has received at least one dose of each specified age-appropriate vaccine required by this rule. To remain enrolled, the student must complete the required subsequent doses in each vaccine series on schedule and as rapidly as is medically feasible and provide acceptable evidence of vaccination to the school. A school nurse or school administrator shall review the immunization status of a provisionally enrolled student every 30 days to ensure continued compliance in completing the required doses of vaccination. If, at the end of the 30-day period, a student has not received a subsequent dose of vaccine, the student is not in compliance and the school shall exclude the student from school attendance until the required dose is administered.

(b) A student who is homeless, as defined by §103 of the McKinney Act, 42 USC §11302, shall be admitted temporarily for 30 days if acceptable evidence of vaccination is not available. The school shall promptly refer the student to appropriate public health programs to obtain the required vaccinations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200900603

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Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§117.140, 117.145, 117.340, 117.345, 117.2035, and 117.2045 *without changes* to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7443).

Sections 117.140, 117.145, 117.340, 117.345, 117.2035, and 117.2045 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On October 15, 2007, Viridis Energy Texas, L.P., submitted two petitions for rulemaking regarding provisions for output-based monitoring alternatives for stationary engines and stationary gas turbines at major and minor sources of nitrogen oxides (NO_x) in the Houston-Galveston-Brazoria (HGB) ozone nonattainment area. The commission approved the petitions for rulemaking on December 5, 2007, and issued an order on December 13, 2007, directing the executive director to examine the issues in the petitions and to initiate rulemaking.

At the April 16, 2008, commissioners' agenda, the commissioners agreed to remand the proposed rule change and directed staff to examine expanding the proposed rules to include the Beaumont-Port Arthur (BPA) ozone nonattainment area. Staff concluded that expanding the rules to include the BPA ozone nonattainment area would provide additional flexibility for owners and operators of applicable sources to monitor unit activity levels in the manner most appropriate for their facility.

The rules in Chapter 117 currently require stationary reciprocating internal combustion engines and stationary gas turbines located at major sources of NO_x in the BPA and HGB ozone nonattainment areas to each have a fuel flow meter installed. Stationary reciprocating internal combustion engines and stationary gas turbines located at minor sources of NO_x in the HGB ozone nonattainment area that are in the Mass Emission Cap and Trade (MECT) Program are also required to have a fuel flow meter installed. The adopted rule change will allow the use of output-based monitoring as an alternative to the engine and turbine fuel flow meter requirements for the BPA and HGB ozone nonattainment areas. The adopted rule change will be consistent with an option currently allowed under Chapter 117 for engines in the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area. During the recent DFW eight-hour ozone nonattainment area rulemaking under Chapter 117, a provision was added under §117.440(a)(2)(D), in response to comment, to allow the output-based alternative to fuel flow monitoring for stationary internal combustion engines and stationary gas turbines. Similar provisions were not provided for the BPA and HGB ozone nonattainment areas because no comments were accepted for the BPA and HGB ozone nonattainment areas at that time.

The adopted rules will amend the major source rule in the BPA ozone nonattainment area in Chapter 117, Subchapter B, Division 1, and amend both the major and minor source rules for the HGB ozone nonattainment area in Chapter 117, Subchapter B, Division 3 and Subchapter D, Division 1. These adopted changes will be consistent with the output-based monitoring option currently allowed for stationary reciprocating internal combustion engines and stationary gas turbines at major sources in the DFW eight-hour ozone nonattainment area. The adopted rule change applies to major sources of NO_x in the BPA and HGB nonattainment areas, and provides output-based monitoring as an additional alternative to the existing requirement to install fuel flow meters on stationary reciprocating internal combustion engines and stationary gas turbines. For consistency with the DFW eight-hour ozone nonattainment area requirements, a corresponding addition is needed to prescribe recordkeeping requirements for sources using the output-based monitoring op-

tion. Owners or operators using output-based monitoring will be required to maintain records of daily average horsepower and hours of operation.

The adopted rule change also applies to minor sources of NO_x in the HGB ozone nonattainment area, and provides output-based monitoring as an additional alternative to the existing requirement to install fuel flow meters on stationary reciprocating internal combustion engines and stationary gas turbines. For consistency with the DFW eight-hour ozone nonattainment area requirements, a corresponding addition is needed to prescribe recordkeeping requirements for sources using the output-based monitoring option. Owners or operators using output-based monitoring will be required to maintain records of daily average horsepower and hours of operation.

SECTION BY SECTION DISCUSSION

The adopted rules amend the major source rules in the BPA ozone nonattainment area in Chapter 117, Subchapter B, Division 1, §117.140 and §117.145, and both the major and minor source rules for the HGB ozone nonattainment area in Chapter 117, Subchapter B, Division 3, §117.340 and §117.345, and Chapter 117, Subchapter D, Division 1, §117.2035 and §117.2045. These adopted changes will be consistent with the output-based monitoring option currently allowed for stationary engines and gas turbines at major sources in the DFW eight-hour ozone nonattainment area.

SUBCHAPTER B, COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1, BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT AREA MAJOR SOURCES

Section 117.140, Continuous Demonstration of Compliance

The commission adopts §117.140(a)(2) to include a subparagraph (D). Section 117.140(a)(2) provides for alternatives to the totalizing fuel flow meter requirement in §117.140(a). Adopted subparagraph (D) provides an additional output-based alternative for stationary reciprocating internal combustion engines and stationary gas turbines to the §117.140(a) requirement to install, calibrate, maintain, and operate totalizing fuel flow meters on each applicable unit listed under §117.140(a)(1). Applicable units in §117.140(a)(1)(B) and (C) include, respectively, stationary reciprocating internal combustion engines and stationary gas turbines.

The adopted new subparagraph (D) specifies that stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures. This language is identical to existing rule text for the output-based monitoring alternative for stationary engines and stationary gas turbines in the DFW eight-hour ozone nonattainment area.

Section 117.145, Notification, Recordkeeping, and Reporting Requirements

The commission adopts §117.145(f) to include a paragraph (10) for recordkeeping requirements consistent with the horsepower and hours of operation data that would be collected by the output-based alternative monitoring provision of adopted

§117.140(a)(2)(D). Existing §117.145(f) consists of the recordkeeping requirements for units subject to Division 1. The subsection directs owners or operators of subject units to maintain written or electronic records of specified data for a period of at least five years and make available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. Existing §117.145(f)(1) - (9) detail the types of data to be recorded depending on the specific compliance and monitoring methodologies specified in this division.

Adopted §117.145(f)(10) specifies the recordkeeping requirements of output-based monitoring data based on the existing recordkeeping rule text in §117.445(f)(3)(C) for output-based data collection in the DFW eight-hour ozone nonattainment area. Adopted §117.145(f)(10) states that an owner or operator electing to use the alternative monitoring system allowed under §117.140(a)(2)(D) shall record the daily average horsepower and total daily hours of operation. In addition, adopted paragraph (10) clarifies that records of annual fuel usage specified under §117.145(f)(1) are not required for units that are monitored according to adopted §117.140(a)(2)(D).

SUBCHAPTER B, COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 3, HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MAJOR SOURCES

Section 117.340, Continuous Demonstration of Compliance

The commission adopts §117.340(a)(2) to include a subparagraph (D). Section 117.340(a)(2) provides for alternatives to the totalizing fuel flow meter requirement in §117.340(a). Adopted subparagraph (D) provides an additional output-based alternative for stationary reciprocating internal combustion engines and stationary gas turbines to the §117.340(a) requirement to install, calibrate, maintain, and operate totalizing fuel flow meters on each applicable unit listed under §117.340(a)(1). Applicable units in §117.340(a)(1)(A)(ii) and (iii) include, respectively, stationary reciprocating internal combustion engines and stationary gas turbines.

The adopted new §117.340(a)(2)(D) specifies that stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures. This language is identical to existing rule text for the output-based monitoring alternative for stationary engines and stationary gas turbines in the DFW eight-hour ozone nonattainment area.

Section 117.345, Notification, Recordkeeping, and Reporting Requirements

The commission adopts §117.345(f) to include a paragraph (12) for recordkeeping requirements consistent with the horsepower and hours of operation data that would be collected by the output-based alternative monitoring provision of adopted §117.340(a)(2)(D). Existing §117.345(f) consists of the recordkeeping requirements for units subject to this division. The subsection directs owners or operators of subject units to maintain written or electronic records of specified data for a period of at least five years and make available upon request

by authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction. Existing §117.345(f)(1) - (11) detail the types of data to be recorded depending on the specific compliance and monitoring methodologies specified in this division and under 30 TAC Chapter 101, Subchapter H, Division 3, Mass Emissions Cap and Trade.

Adopted §117.345(f)(12) specifies the recordkeeping requirements of output-based monitoring data based on the existing recordkeeping rule text in §117.445(f)(3)(C) for output-based data collection in the DFW eight-hour ozone nonattainment area. Adopted §117.345(f)(12) states that an owner or operator electing to use the alternative monitoring system allowed under §117.340(a)(2)(D) shall record the daily average horsepower and total daily hours of operation. In addition, adopted paragraph (12) clarifies that records of annual fuel usage specified under §117.345(f)(1) are not required for units that are monitored according to adopted new §117.340(a)(2)(D).

SUBCHAPTER D, COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1, HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MINOR SOURCES

Section 117.2035, Monitoring and Testing Requirements

The commission adopts §117.2035(a)(2) by adding a subparagraph (G), which provides an output-based monitoring alternative to installing, calibrating, maintaining, and operating totalizing fuel flow meters for stationary reciprocating internal combustion engines and stationary gas turbines at minor sources in the HGB ozone nonattainment area. Existing §117.2035(a)(2)(A) - (F) specifies alternatives to the fuel flow meter requirements of this section. This rulemaking adoption creates a subparagraph (G) to add an output-based monitoring alternative to the existing alternatives to the fuel flow monitoring requirement.

Adopted §117.2035(a)(2)(G) allows owners or operators to use a continuous monitoring system that continuously monitors horsepower and hours of operation as an alternative to installing fuel meters. The monitoring system must be installed, calibrated, maintained, and operated according to the manufacturers' recommended procedures. This rule language is consistent with the existing output-based monitoring alternative for major sources in the DFW eight-hour ozone nonattainment area and the adopted major source output-based monitoring alternative included in this rulemaking.

Section 117.2045, Recordkeeping and Reporting Requirements

The commission adopts §117.2045(a) to include a paragraph (7) requiring records of daily average horsepower and total daily hours of operation for each engine that the owner or operator elects to use the output-based monitoring option under adopted §117.2035(a)(2)(G). Adopted paragraph (7) provides consistent recordkeeping and reporting requirements for data collected using the output-based alternative monitoring provisions for stationary engines and stationary gas turbines. Adopted §117.2045(a)(7) requires an owner or operator electing to use the alternative monitoring system allowed under adopted §117.2035(a)(2)(G) to maintain records of the daily average horsepower and total daily hours of operation for each stationary reciprocating internal combustion engine or stationary gas turbine. Adopted paragraph (7) clarifies that records of annual fuel usage specified under §117.2045(a) are not required for units that are monitored according to adopted §117.2035(a)(2)(G). These records must be maintained for at least five years and

must be made available upon request to the authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules do not meet the criteria for a major environmental rule. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The intent of the adopted rules is to provide flexibility by allowing the use of output-based monitoring as an alternative to the engine and turbine fuel flow meter requirements for the HGB and BPA ozone nonattainment areas. The adopted rules are also intended to add consistency to the rules; this option is currently allowed under Chapter 117 for stationary reciprocating internal combustion engines and stationary gas turbines in the DFW eight-hour ozone nonattainment area. Therefore, the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure.

The adopted rules will not affect in a material way the economy, a sector of the economy, productivity, jobs, the environment or the public health and safety of the state or a sector of the state. Under the adopted rules, the owners and operators would monitor the engine or turbine's horsepower output as opposed to the fuel flow input for emissions monitoring requirements. Specific costs for the output-based alternative monitoring option are not known. However, the alternative is provided as an option to an existing requirement; it is expected that owners or operators will only use the output-based monitoring if it is more cost-effective than the current requirement. The output-based monitoring is at least as accurate as the input-based fuel flow monitoring currently required. Therefore, the adopted rules will not have an adverse affect on the economy, the environment, or public health and safety.

Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action, which is designed to add flexibility and consistency to the rules, does not exceed an express requirement under state or federal law. There is no contract or delegation agreement that covers the topic that is the subject of this action.

Furthermore, the rulemaking is not adopted solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 and the Texas Water Code, as cited in the STATUTORY AUTHORITY section of this preamble. The commission invited public comment re-

garding the draft regulatory impact analysis determination during the public comment period, but no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission has evaluated the adopted rulemaking and made a preliminary assessment determining that Texas Government Code, §2007, Governmental Action Affecting Private Property Rights, is not applicable. Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or it means a governmental action that affects an owner's private real property that is the subject of the governmental action in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25% in the market value of the affected private real property.

The adopted rule change would allow for an alternative NO_x emissions monitoring option for owners and operators of stationary reciprocating internal combustion engines and stationary gas turbines in the BPA and HGB ozone nonattainment areas. Promulgation and enforcement of these adopted rules will constitute neither a statutory nor constitutional taking of private real property. The adopted rules do not restrict or limit a landowner's rights to the property or reduce the market value of the property by 25%. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found it is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received concerning the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the amendments are adopted by the commission, owners or operators subject to the federal operating permit program that elect to comply with the optional output-based monitoring may need to revise their operating permit to include the new requirement.

PUBLIC COMMENT

Due to the effects of Hurricane Ike and to accommodate those affected by the hurricane, the public comment period was extended from October 6, 2008, to October 24, 2008. The public hearings scheduled for September 30, 2008, in Houston and

October 1, 2008, in Beaumont were canceled and rescheduled for October 23, 2008, at the TCEQ Park 35 Circle Complex in Austin. A public hearing on the proposed rules was held in Austin on October 23, 2008, at 2:00 p.m. at the complex. No oral comments were received. The comment period closed on October 24, 2008. Written comments were received from the EPA, Texas Chemical Council (TCC), and Texas Instruments Inc. (TI).

RESPONSE TO COMMENTS

EPA requested the commission explain how a source in the HGB area that elects to use the output-based monitoring alternative option will be able to determine its mass emissions to show compliance with the MECT program.

The output-based monitoring alternative provides activity data equivalent with the existing monitoring specifications and can easily be converted into an annual mass emission rate for compliance with the MECT program. The output-based monitoring provisions adopted with this rulemaking provide the owner or operator with actual horsepower activity data and actual hours of operation. This activity data can then be multiplied by the measured NO_x emission rate in grams per horsepower-hour (g/hp-hr) and then converted to tons per year for determining the necessary MECT allowances needed for compliance. The NO_x g/hp-hr emission rate is determined according to the required test methods already specified in the rule and previously approved by the EPA for this determination. No change has been made to the rule based on this comment.

TCC expressed support for the proposed output-based alternative monitoring alternative, which will provide increased flexibility for owners and operators.

The commission appreciates TCC's comment and support. No change has been made to the rule based on this comment.

TI commented that the commission should increase the hours allowed for testing and maintenance under the exemptions for stationary gas turbines and stationary internal combustion engines used exclusively in emergency situations in §117.303(a)(6) and §117.2003(a)(2). In addition, TI recommended adding two new exceptions to the restriction on hours of operation for stationary diesel and dual-fuel engines in §§117.310(f), 117.410(g), 117.2030(c), and 117.2130(c). The two proposed new exceptions would exempt providing power to critical operations and safety equipment during planned maintenance activities during the period October 1 through March 31, and providing back-up power sources to critical internal operations and safety equipment when power reliability is threatened. Finally, TI recommended that these suggested new exceptions and the other exceptions already provided under §§117.310(f), 117.410(g), 117.2030(c), and 117.2130(c) be included in the emergency use exemptions under §§117.303(a)(6), 117.403(a)(7), 117.2003(a)(2), and 117.2103(5).

The commission appreciates the comments from TI. TI did not submit comments on those proposed sections for amendment. The commission did not propose amendments to the sections commented on by TI and those sections are beyond the scope of this rulemaking. Therefore, the commission is prohibited from making any changes to those sections of Chapter 117 during this rulemaking. No change has been made to the rule based on these comments.

SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL,

AND INSTITUTIONAL SOURCES IN OZONE
NONATTAINMENT AREAS
DIVISION 1. BEAUMONT-PORT ARTHUR
OZONE NONATTAINMENT AREA MAJOR
SOURCES

30 TAC §117.140, §117.145

STATUTORY AUTHORITY

The amendments are adopted under the authority of the following: Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amendments are also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382.

The adopted amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, and 382.051(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900599
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 4, 2009
Proposal publication date: September 5, 2008
For further information, please call: (512) 239-6087



DIVISION 3. HOUSTON-GALVESTON-
BRAZORIA OZONE NONATTAINMENT AREA
MAJOR SOURCES

30 TAC §117.340, §117.345

STATUTORY AUTHORITY

The amendments are adopted under the authority of the following: Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The amendments are also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382.

The adopted amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, and 382.051(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: September 5, 2008
For further information, please call: (512) 239-6087



SUBCHAPTER D. COMBUSTION
CONTROL AT MINOR SOURCES IN
OZONE NONATTAINMENT AREAS
DIVISION 1. HOUSTON-GALVESTON-
BRAZORIA OZONE NONATTAINMENT AREA
MINOR SOURCES

30 TAC §117.2035, §117.2045

STATUTORY AUTHORITY

The amendments are adopted under the authority of the following: Texas Water Code (TWC), §5.102, concerning General

Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The amendments are also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382.

The adopted amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, and 382.051(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2009.

TRD-200900601

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: March 4, 2009

Proposal publication date: September 5, 2008

For further information, please call: (512) 239-6087



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.11

The Texas Bond Review Board (BRB) adopts the repeal of §181.11, concerning Filing of Requests for Proposal, without changes to the proposal as published in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10298).

The purpose of the repeal is to comply with current statute and clarify existing Bond Review Board processes. The rule is now superseded by Section 1 of Senate Bill 1332 passed in the 80th Legislature that amends §1201.027 of the Texas Government Code by adding subsection (d) that requires an issuer of state securities that selects or contracts with a person to provide services to submit, on request, request for proposals to the BRB to provide the services. Pursuant to this statute, the Bond Finance Office has requested that all issuers provide such request for proposals, and the BRB has already received three requests for proposals for its review. Section 181.11 has become obsolete and is no longer needed.

The 30-day comment period ended January 18, 2009, and BRB did not receive any comments on the proposed repeal. No public hearing was requested under Texas Government Code §2001.029.

The repeal is adopted under Texas Government Code §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2009.

TRD-200900605

Bob Kline

Executive Director

Texas Bond Review Board

Effective date: March 5, 2009

Proposal publication date: December 19, 2008

For further information, please call: (512) 475-4800



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

State Board for Educator Certification

Title 19, Part 7

TRD-200900610

Filed: February 13, 2009



Proposed Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 229, Accountability System for Educator Preparation, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 229 continue to exist. The comment period begins February 27, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 229 at the SBEC meeting to be held on April 3, 2009.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200900633

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Filed: February 13, 2009



The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 241, Principal Certificate, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 241 continue to exist. The comment period begins February 27, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 241 at the SBEC meeting to be held on April 3, 2009.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200900634

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Filed: February 13, 2009



The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 242, Superintendent Certificate, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 242 continue to exist. The comment period begins February 27, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 242 at the SBEC meeting to be held on April 3, 2009.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200900635

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Filed: February 13, 2009



Texas Medical Board

Title 22, Part 9

The Texas Medical Board (Board) proposes to review Chapter 183, relating to Acupuncture, §§183.1 - 183.23, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register* the Board contemporaneously proposes amendments to §§183.2, 183.4, 183.10, and 183.20.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200900640

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Filed: February 13, 2009



Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code, Title 7, §97.103, relating to recusal or disqualification of Commission members, §97.105, relating to frequency of examination, and §97.200, relating to employee training program. Notice of the proposed review was published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9275).

The rules were reviewed as a result of the Department's general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§97.103, 97.105, and 97.200 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-200900580

Harold E. Feeney

Commissioner

Credit Union Department

Filed: February 12, 2009



State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 230, Profes-

sional Educator Preparation and Certification, Subchapter A, Assessment of Educators; Subchapter E, Centers for Professional Development of Teachers; Subchapter G, Certification Requirement for Classroom Teachers; Subchapter J, Certification Requirements for Educators Other than Classroom Teachers and Educational Aides; Subchapter M, Certification of Educators in General; Subchapter N, Certificate Issuance Procedures; Subchapter O, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States; Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs; Subchapter Q, Permits; Subchapter S, Educational Aide Certificate; Subchapter U, Assignment of Public School Personnel; Subchapter V, Continuing Education; and Subchapter Y, Definitions, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 230, in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9087).

Relating to the review of 19 TAC Chapter 230, the SBEC finds that the reasons for adoption continue to exist and readopts the rules with changes to update the rules to reflect current law and add specificity to the requirements for professional educator preparation and certification.

The SBEC is proposing amendments to §§230.5, 230.411, 230.413, 230.431-230.438, 230.461 - 230.464, 230.482, 230.483, 230.501 - 230.507, 230.512, 230.551 - 230.555, 230.559, 230.560, and 230.610; the repeal of §§230.121, 230.192 - 230.199, 230.301, 230.305, 230.310, 230.316, 230.481, 230.484, 230.509 - 230.511, 230.601, and 230.801; and new §§230.1, 230.412, and 230.481, which may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 230.

This concludes the review of 19 TAC Chapter 230.

TRD-200900611

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Filed: February 13, 2009



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §97.113(b)

<u>For Credit Unions with Total Assets Of:</u>	<u>The Operating Fee is:</u>
Less than \$200,000	\$200
\$200,000 but less than <u>\$1M</u> [\$500,000]	<u>\$200 plus .001625</u> [\$450 + \$2.21 per \$1,000] of <u>excess</u> [the amount] over \$200,000
[\$500,000 but less than \$1M]	[\$1,113 + \$.85 per \$1,000 of the amount over \$500,000]
\$1M but less than <u>\$10M</u> [\$2.5M]	<u>\$1,500 plus .00034</u> [\$1,538 + \$.37 per \$1,000] of <u>excess</u> [the amount] over \$1M
[\$2.5M but less than \$5M]	[\$2,093 + .35 per \$1,000 of the amount over \$2.5M]
[\$5M but less than \$10M]	[\$2,968 + \$.32 per \$1,000 of the amount over \$5M]
\$10M but less than \$25M	<u>\$4,560 plus .000144</u> [\$4,568 + \$.14 per \$1,000] of <u>excess</u> [the amount] over \$10M
\$25M but less than \$50M	<u>\$6,660 plus .00017</u> [\$6,668 + \$.17 per \$1,000] of <u>excess</u> [the amount] over \$25M
\$50M but less than \$100M	<u>\$10,910 plus .00019</u> [\$10,918 + \$.19 per \$1,000] of <u>excess</u> [the amount] over \$50M
\$100M but less than <u>\$500M</u> [\$250M]	<u>\$20,410 plus .000080</u> [\$20,418 + \$.082 per \$1,000] of <u>excess</u> [the amount] over \$100M
[\$250M but less than \$500M]	[\$32,718 + \$.076 per \$1,000 of the amount over \$250M]
\$500M but less than <u>\$1,000M</u> [\$1750M]	<u>\$52,410 plus .000072</u> [\$51,718 + \$.074 per \$1,000] of <u>excess</u> [the amount] over \$500M
[\$750M but less than \$1,000M]	[\$69,468 + \$.071 per \$1,000 of the amount over \$750M]
\$1,000M <u>but less than \$2,000M</u> [and over]	<u>\$88,410 plus .000069</u> [\$87,218 + \$.069 per \$1,000] of <u>excess</u> [the amount] over \$1,000M
<u>\$2,000M and over</u>	<u>\$157,410 plus .000062 of excess over \$2,000M</u>

Figure: 10 TAC §307.3(c)(1)

Table 1: Degrees of Relationship

Degrees of Relationship to the Builder/Remodeler or Builder/Remodeler's Spouse	
Reminder: Relationships through adoption and step-relationships are treated as though the individuals are related by full blood.	
First Degree <ul style="list-style-type: none"> • Child • Parent • Husband/Wife 	Second Degree <ul style="list-style-type: none"> • Grandchild • Sister/Brother • Grandparent
Third Degree <ul style="list-style-type: none"> • Great-grandchild • Niece/Nephew • Aunt/Uncle • Great-grandparent 	Fourth Degree <ul style="list-style-type: none"> • 1st Cousin • Great-great-grandchild • Grandniece/grandnephew • Great Aunt/Uncle • Great-great-grandparent
Notes: <ol style="list-style-type: none"> 1. Relationships of consanguinity are those where individuals are related by kinship. Two persons are related to each other by consanguinity if one is a descendant of the other or if they have a common ancestor. 2. Relationships by affinity are those where individuals are related by marriage. Two persons are related to each other by affinity if they are married to each other or if the spouse of one of the persons is related by consanguinity to the other person. 3. Consanguine relationships include those by half-blood and legal adoption, as though the individuals are related by full blood. 4. Step-relationships are treated as though the individuals are related by full blood. For example, if a builder/remodeler is the step-parent and the fee inspector is the step-child, then the individuals are treated as if they are parent and child and are in the first degree of consanguinity. 5. A husband and wife are related to each other in the first degree by affinity. Other relationships by affinity to the builder/remodeler or builder/remodeler's spouse are treated as having the same degree of relationship as the degree of the underlying relationship by consanguinity. For example, if a builder/remodeler and fee inspector are related to each other in the second degree by consanguinity, the spouse of the builder/remodeler is related to the fee inspector in the second degree by affinity and the spouse of the fee inspector is related to the builder/remodeler in the second degree by affinity. 6. Termination of a marriage by divorce or the death of a spouse terminates the relationships by affinity created by that marriage. However, if a child of that marriage is living, then that marital relationship is treated as continuing to exist as long as a child of that marriage is still living. 	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Applications for the Other Victim Assistance Grant Program

The Office of the Attorney General (OAG) is soliciting local and statewide applications for projects that provide victim-related services or assistance. The purpose of the OAG OVAG program is to provide funds, using a competitive allocation method, to programs that address the unmet needs of victims by maintaining or increasing their access to quality services.

Applicable Funding Source for OVAG: The Texas Code of Criminal Procedure, Article 56.541(e) authorizes the OAG to use money appropriated from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting victim related services or assistance. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Local units of government, non-profit agencies with 26 U.S.C. 501(c)(3) status; and state agencies are eligible to apply for an OVAG.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for an OVAG. The deadline to complete registration is 5:00 p.m. CST March 27, 2009. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: <http://www.oag.state.tx.us/victims/grants.shtml>.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST April 22, 2009 to be considered timely filed.

Filing Instructions: **To meet the deadline, the Application must be submitted by both hard copy and email.** An Application will be considered timely filed when the OAG receives the paper (hard copies) and the electronic (email) of the Application including any required attachments in the following ways by the required deadline:

1. Hard copies - Via a Next Day Air Overnight Delivery Service:

The Applicant must use a *Next Day Air Overnight Delivery Service* that tracks its deliveries. Submission by Next Day Air Overnight Delivery Service ensures that your Application can be tracked.

The Applicant must submit one (1) original and three (3) copies of the Application including any required attachments.

The Application should be printed on 8.5 x 11 inch paper. Separate each Application with a binder clip. Do not staple or otherwise bind Applications.

The Application must be sent to the following address:

CVS GRANTS APPLICATIONS - MC 005

OFFICE OF THE ATTORNEY GENERAL

300 W 15TH ST RM 102

AUSTIN, TX 78701-1649

The OAG cannot accept Applications submitted in other formats, including walk-in, hand delivery or same day courier service.

2. Email copies:

The Applicant must submit the Excel workbook by email.

The Excel workbook must be sent to the following email address: CVS-GrantsApplications@oag.state.tx.us

An auto-reply message will be generated by the OAG for email received at this address. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 p.m. CST on April 22, 2009.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding all programs may apply for is \$20,000 per fiscal year. The maximum amount a local program may apply for is \$50,000 per fiscal year. The maximum amount a statewide program may apply for is \$220,000 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2009 through August 31, 2011, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements for OVAG projects.

Limited Volunteer Requirements: All non-governmental OVAG Applicants must use volunteers in some way to support the mission of their organization. Applicants must identify the role of a volunteer within the organization and describe program components related to recruitment, retention and training of volunteers. If the organization does not currently utilize volunteers, a plan must be provided explaining how a volunteer program will be developed and implemented during the grant term.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant

on the proposed project activities and budget. OVAG funding decisions will use a competitive allocation method.

OVAG Purpose Area: All OVAG projects must address one or more of the OVAG purpose areas: providing direct victim services including, but not limited to, counseling, crisis intervention, assistance with Crime Victim's Compensation, legal assistance, victim advocacy, and information and referral; providing outreach or community education to help identify crime victims who might not otherwise be reached and provide or refer them to needed services; connecting crime victims to services for the purpose of supporting or assisting in their recovery; training professionals and volunteers to improve their ability to inform victims of their rights, to assist victims in their recovery, or to establish a continuum of care for victims; or other support for victim related services or assistance as determined by the OAG.

Staffing: All OVAG projects must:

(a) Include one direct victim service staff person working at least twenty hours per week or two direct victim service staff persons working at least ten hours each per week in the applicant's budget. Direct Victim Services are defined in the Definitions section of the Application Kit.

(b) Include a minimum of 75% of an Applicant's budget in the Personnel and Fringe Benefits budget categories.

The above requirements apply to all OVAG Applicants, including those that rely upon volunteers or contracted staff to deliver direct victim services. The OAG may grant an exception to one or both of these requirements for projects that demonstrate a need in their Application.

In addition, an Applicant is limited to no more than six positions, no more than three of which may be positions providing administrative support to the OVAG project.

Preference: The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves the right to give priority to programs that provide direct victim services with grant funds, that provide information and education about victims' rights in their community, or that utilize volunteers in providing services. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas. The OAG may award OVAG funds to programs that applied for another OAG grant program.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Jennifer McShane at CVSGrantsApplications@oag.state.tx.us or (512) 936-1278.

TRD-200900665

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 17, 2009



Request for Applications for the Sexual Assault Prevention and Crisis Services-Federal Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications from local and statewide programs that wish to utilize SAPCS-Federal funds for projects that support the primary prevention of sexual assault or sexual violence.

Applicable Funding Source: The source of federal funds includes the Federal Department of Health and Human Services, Preventative Health and Health Services Block Grant, Catalog of Federal Domestic Assistance (CFDA) Number 93.991 and Injury Prevention and Control Research and State and Community Based Programs, CFDA Number 93.136. The federal funds are used for grant contracts supporting the primary prevention of sexual assault or sexual violence. All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Local units of government, excluding law enforcement agencies and prosecutor's offices; non-profit agencies with 26.U.S.C. 501 (c)(3) status; and state agencies are eligible to apply for a SAPCS-Federal grant.

Local Programs: Eligible local programs must meet the local program eligibility requirements for a SAPCS-State grant which means the local program must offer the following minimum services for at least nine months prior to receiving an SAPCS-Federal grant contract: 24-hour crisis hotline; crisis intervention; public education; advocacy and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts for survivors and their family members; and crisis intervention volunteer training.

Statewide Program: A statewide program, to be eligible for special project funding, must show that it supports efforts to maintain or expand existing services offered by local sexual assault programs; improve services to survivors; or other activities consistent with Texas Government Code, Chapter 420.

A local or statewide program does not have to actually apply or receive a SAPCS-State grant to meet these eligibility requirements for an SAPCS-Federal grant.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for an SAPCS-Federal grant. The deadline to complete registration is 5:00 p.m. CST March 27, 2009. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: <http://www.oag.state.tx.us/vic-tims/grants.shtml>.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST April 22, 2009 to be considered timely filed.

Filing Instructions: **To meet the deadline, the Application must be submitted by both hard copy and email.** An Application will be considered timely filed when the OAG receives the paper (hard copies) and the electronic (email) of the Application including any required attachments in the following ways by the required deadline:

1. Hard copies - Via a Next Day Air Overnight Delivery Service:

The Applicant must use a *Next Day Air Overnight Delivery Service* that tracks its deliveries. Submission by Next Day Air Overnight Delivery Service ensures that your Application can be tracked.

The Applicant must submit one (1) original and three (3) copies of the Application including any required attachments.

The Application should be printed on 8.5 x 11 inch paper. Separate each Application with a binder clip. Do not staple or otherwise bind Applications.

The Application must be sent to the following address:

CVS GRANTS APPLICATIONS - MC 005

OFFICE OF THE ATTORNEY GENERAL

300 W 15TH ST RM 102

AUSTIN, TX 78701-1649

The OAG cannot accept Applications submitted in other formats, including walk-in, hand delivery or same day courier service.

2. Email copies:

The Applicant must submit the Excel workbook by email.

The Excel workbook must be sent to the following email address: CVS-GrantsApplications@oag.state.tx.us.

An auto-reply message will be generated by the OAG for email received at this address. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 p.m. CST on April 22, 2009.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding all programs may apply for is \$20,000 per fiscal year. The maximum amounts of funding are as follows: new local and new statewide programs-\$25,000 per fiscal year; currently funded local programs-\$150,000 per fiscal year; and currently funded statewide programs-\$450,000 per fiscal year.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the SAPCS-Federal funds it received in fiscal year (FY) 2009 less any amounts awarded for "technology funds". The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to one year from September 1, 2009 through August 31, 2010, subject to and contingent on funding and/or approval by the OAG. The OAG may, at its discretion, opt to extend contracts for an additional twelve months.

Opportunity to Apply for Future Funding: The OAG may decide to not issue a separate Application Kit for FY2011, therefore this is notice to all applicants that failure to apply and receive funding from this Application Kit may mean that the next available opportunity to apply for SAPCS-Federal funds would be for FY 2012-2013.

No Match Requirements: There are no match requirements for SAPCS-Federal projects.

Volunteer Requirements: All SAPCS-Federal projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

SAPCS Purpose Area: The purpose of the SAPCS-Federal program is to fund strategies and activities that support the primary prevention of sexual assault or sexual violence and any other purposes consistent with Texas Government Code, Chapter 420.

Staffing: All SAPCS-Federal projects must:

(a) Include a minimum of 75% of an applicant's budget in the personnel and fringe budget categories.

(b) Designate and request funding for a Primary Prevention Coordinator that is responsible for the coordination and implementation of primary prevention efforts. This position must, at a minimum, work 20 hours per week on primary prevention activities on the grant.

In addition, only those staff positions that are directly related to achieving the goals of this project will be funded (this includes staff that has direct involvement in the planning, implementation, or delivery of project activities and those who directly supervise such staff).

Preference: The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit. Additional prohibitions include, but are not limited to, using grant funds for: construction and/or renovation; development of major software applications; direct counseling, treatment, or advocacy services to victims or perpetrators of sexual violence; media or awareness cam-

paigns that exclusively promote awareness of where to receive victim services; research; and out-of-state travel for local programs.

OAG Contact Person: If additional information is needed, contact Jennifer McShane at CVSGrantsApplications@oag.state.tx.us or (512) 936-1278.

TRD-200900668

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: February 17, 2009



Request for Applications for the Sexual Assault Prevention and Crisis Services-State Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications from local and statewide programs that provide services to victims of sexual assault.

Applicable Funding Source: The source of state funds is a biennial appropriation by the Texas Legislature, these funds are constitutionally dedicated. Texas Code of Criminal Procedure, Article 56.541(e) authorizes the OAG to use money appropriated from the Texas Compensation to Victims of Crime Fund for grant contracts supporting victim-related services or assistance. Additional funding comes from parole fees pursuant to Texas Code of Criminal Procedure, Article 42.12, Section 19(e) and Texas Government Code, Section 508.189. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements: *Eligible Applicants:* Local units of government, excluding law enforcement agencies and prosecutor's offices; non-profit agencies with 26.U.S.C. 501 (c)(3) status; and state agencies are eligible to apply for a SAPCS-State grant.

Local Programs: A local program must offer the following minimum services for at least nine months prior to receiving a SAPCS-State grant contract: 24-hour crisis hotline; crisis intervention; public education; advocacy and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts for survivors and their family members; and crisis intervention volunteer training.

Statewide Program: A statewide program, to be eligible for special project funding, must show that it supports efforts to maintain or expand existing services offered by local sexual assault programs; improve services to survivors; or other activities consistent with Texas Government Code, Chapter 420.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for an SAPCS-State grant. The deadline to complete registration is 5:00 p.m. CST March 27, 2009. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: <http://www.oag.state.tx.us/victims/grants.shtml>.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST April 22, 2009 to be considered timely filed.

Filing Instructions: **To meet the deadline, the Application must be submitted by both hard copy and email.** An Application will be considered timely filed when the OAG receives the paper (hard copies) and the electronic (email) of the Application including any required attachments in the following ways by the required deadline:

1. Hard copies - Via a Next Day Air Overnight Delivery Service:

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The Application should be printed on 8.5 x 11 inch paper. Separate each Application with a binder clip. Do not staple or otherwise bind Applications.

The Application must be sent to the following address:

CVS GRANTS APPLICATIONS - MC 005

OFFICE OF THE ATTORNEY GENERAL

300 W 15TH ST RM 102

AUSTIN, TX 78701-1649

The OAG cannot accept Applications submitted in other formats, including walk-in, hand delivery or same day courier service.

2. Email copies:

The Applicant must submit the Excel workbook by email.

The Excel workbook must be sent to the following email address: CVS-GrantsApplications@oag.state.tx.us.

An auto-reply message will be generated by the OAG for email received at this address. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 p.m. CST on April 22, 2009.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding all programs may apply for is \$20,000 per fiscal year. The maximum amounts of funding are as follows: new local and new statewide programs-\$30,000 per fiscal year; currently funded local programs-\$200,000 per fiscal year; and currently funded statewide programs-\$300,000 per fiscal year.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the SAPCS-State funds it received in fiscal year (FY) 2009 less any amounts awarded for "technology funds". The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2009 through August 31, 2011, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements for SAPCS-State projects.

Volunteer Requirements: All SAPCS-State projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

SAPCS Purpose Area: The purpose of the SAPCS-State program is to maintain or expand the existing services of local sexual assault programs and any other purposes consistent with Texas Government Code, Chapter 420.

Staffing: All SAPCS-State projects must:

(a) Include one direct victim service staff person working at least twenty hours per week or two direct victim service staff persons working at least ten hours each per week in the applicant's budget. Direct Victim Services are defined in the Definitions section of this Application Kit.

(b) Include a minimum of 75% of an Applicant's budget in the Personnel and Fringe Benefits budget categories.

The above requirements apply to all SAPCS-State Applicants, including those that rely upon volunteers or contracted staff to deliver direct victim services. The OAG may grant an exception to one or both of these requirements for projects that demonstrate a need in their Application.

In addition, an Applicant is limited to no more than six positions, no more than three of which may be positions providing administrative support to the SAPCS-State project.

Preference: The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; out of state travel or costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Jennifer McShane at CVSGrantsApplications@oag.state.tx.us or (512) 936-1278.

TRD-200900667

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 17, 2009



Request for Applications for the Victim Coordinator and Liaison Grant Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications for projects that provide victim-related services or assistance. The purpose of the OAG VCLG program is to fund the victim assistance coordinator and crime victim liaison positions for the purposes set forth in the Texas Code of Criminal Procedure, Article 56.04.

Applicable Funding Source for VCLG: The Texas Code of Criminal Procedure, Article 56.541(e) authorizes the OAG to use money appropriated from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting victim related services or assistance. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: A local criminal prosecutor, defined as a district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases, may apply for a grant to fund the position of a victim assistance coordinator (VAC). A local law enforcement agency, defined as the police department of a municipality or the sheriff's department of any county, may apply for a grant to fund the position of crime victim liaison (CVL).

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: The deadline to complete registration is 5:00 p.m. CST March 27, 2009. On-line registration is required to apply for a VCLG. **If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.** To register go to: <http://www.oag.state.tx.us/victims/grants.shtml>.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST April 22, 2009 to be considered timely filed.

Filing Instructions: **To meet the deadline, the Application must be submitted by both hard copy and email.** An Application will be considered timely filed when the OAG receives the paper (hard copies) and the electronic (email) of the Application including any required attachments in the following ways by the required deadline:

1. Hard copies - Via a Next Day Air Overnight Delivery Service:

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The Application should be printed on 8.5 x 11 inch paper. Separate each Application with a binder clip. Do not staple or otherwise bind Applications.

The Application must be sent to the following address:

CVS GRANTS APPLICATIONS - MC 005

OFFICE OF THE ATTORNEY GENERAL

300 W 15TH ST RM 102

AUSTIN, TX 78701-1649

The OAG cannot accept Applications submitted in other formats, including walk-in, hand delivery or same day courier service.

2. Email copies:

The Applicant must submit the Excel workbook by email.

The Excel workbook must be sent to the following email address: CVS-GrantsApplications@oag.state.tx.us

An auto-reply message will be generated by the OAG for email received at this address. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 p.m. CST on April 22, 2009.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding a program may apply for is \$20,000 per fiscal year. The maximum amount a program may apply for is \$39,000 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2009 through August 31, 2011, subject to and contingent on funding and/or approval by the OAG.

No Match or Volunteer Requirements: There are no match or volunteer requirements for VCLG projects.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

VCLG Purpose Area: All VCLG projects must be used for victim assistance coordinator and/or crime victim liaison positions for the purposes set forth in Texas Code of Criminal Procedure, Article 56.04.

Staffing: All VCLG projects must:

(a) Include one VAC or CVL position working at least 20 hours per week or two positions working at least 10 hours each per week in the applicant's budget.

(b) Include at least 75% of the applicant's budget in the personnel and fringe budget categories.

Preference: The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves

the right to give priority to programs that provide direct victim services with grant funds, that provide information and education about victims' rights in their community, or that utilize volunteers in providing services. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas. The OAG may award Other Victim Assistance Grant (OVAG) funds to programs that would otherwise be eligible for funding under the VCLG program.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Jennifer McShane at CVSGrantsApplications@oag.state.tx.us or (512) 936-1278.

TRD-200900666

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: February 17, 2009

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 6, 2009, through February 12, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on February 18, 2009. The public comment period for this project will close at 5:00 p.m. on March 20, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Friendswood Development Company; Location: The project is located southeast of the FM 518 and Chigger Creek intersection in northern Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Algoa, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 288054; Northing: 3263668. Project Description: The applicant proposes to amend U.S. Army Corps of Engineers (Corps) Permit No. 24151 to add the following work: construction of a 357-acre residential devel-

opment within the subdivision known as West Ranch in north Galveston County, Texas. This project proposes to fill and relocate 1.167 acres (1,951 linear feet) of jurisdictional headwaters and fill 0.02 acres of jurisdictional fringe wetlands. Impacts will total 1.187 acres (1,951 linear feet). The drainage improvements will include the construction of two (2) backslope swale drains with associated articulated blocks for erosion control. Three (3) outfall structures will be constructed which outfall into the proposed wetland mitigation area. The backslope swale drains and outfall structures were designed in pairs and grouped together within the proposed drainage channel in order to minimize impacts to the proposed wetland mitigation and water quality enhancement area. The 1.187 acres (1,951 linear feet) of impacts will be mitigated with the construction of 1.2 acres (600 linear feet) of wetlands within the bottom of the modified drainage channel and created detention area located on the northern end of the relocated headwater/drainage channel. CCC Project No.: 09-0085-F1. Type of Application: U.S.A.C.E. permit application #SWG-2005-02260 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Allegro North Condominiums; Location: The project is located at 620 South Fulton Beach Road, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 693427; Northing: 3104303. Project Description: The applicant has changed their mitigation plan to construct an offshore wave break originally proposed to offset the impacts from their unauthorized placement of fill in waters of the United States. The after-the-fact application for the fill was previously reviewed under Public Notice 23446 issued on 9 March 2005 and the original mitigation proposal was reviewed under Interagency Coordination Notice 23446 issued 29 April 2008. The applicant chose to drop the original mitigation plan and now proposes to place riprap material along 500 feet of bulkheaded shoreline onsite. CCC Project No.: 09-0087-F1. Type of Application: U.S.A.C.E. permit application #SWG-2003-02541 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: JP Ventures; Location: The project is located on an 8.9-acre tract, on the east side of State Highway 361, north of its intersection with Howard Boulevard, in Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 689888; Northing: 3078510. The mitigation site is located on a 10-acre tract adjacent to the west side of Farm-to-Market Road 1781 near its intersection with McLester Road, north of Rockport, in Aransas County, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14, Easting 687844; Northing 3104591. Project Description: The applicant proposes to fill 2.6 acres of adjacent wetlands on the project site to construct a mixed-use residential and commercial development. The development plan includes a shallow water/marsh feature that would serve as a stormwater detention basin and involves the excavation of an additional 1.1 acres of adjacent wetlands. As mitigation for project impacts, the applicant proposes to construct 6.5 acres of high marsh wetland complex adjacent to Port Bay. Elevations conducive to high marsh vegetation would be achieved by mechanical scrape-down and placement of excavated materials in uplands located onsite. The wetland would receive and be maintained by rainwater runoff that flows from properties adjacent to the site. Vegetation is expected to establish naturally on the site, with natural re-

cruitment from adjacent seed banks near Copano Bay. The mitigation property would be preserved in perpetuity under a conservation easement, deed restriction, or some other legal instrument. CCC Project No.: 09-0095-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01793 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Jack Ikenaga, Sr.; Location: The project is located on Sabine Lake, at 3654 Martin L. King, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 410289; Northing: 3293667. Project Description: This is an after-the-fact permit application. The applicant is requesting authorization to retain the placement of fill material into 0.43 acre of wetland and proposes to construct a 3,156-square-foot pier and boathouse. The applicant proposes to restore 0.09 acre of the initially impacted wetlands. The total amount of permanent fill associated with this permit action will be 0.32 acre. The pier will be built over wetlands and open waters. The proposed boathouse will be covered. CCC Project No.: 09-0097-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01754 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200900654

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: February 17, 2009

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 2/23/09 - 3/01/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 2/23/09 - 3/01/09 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 3/01/09 - 3/31/09 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 3/01/09 - 3/31/09 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200900691

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 18, 2009

Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from First Service Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Holiday Inn & Suites - Houston Medical Center, 6800 Main Street, Houston, Texas 77030, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200900682

Harold E. Feeney

Commissioner

Credit Union Department

Filed: February 18, 2009

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Unity One Credit Union, Fort Worth, Texas - See *Texas Register* issue dated November 28, 2008.

First Service Credit Union, Houston, Texas - See *Texas Register* issue dated December 26, 2008.

Applications for a Merger or Consolidation - Approved

Island Teachers Federal Credit Union (Galveston) and Associated Credit Union of Texas (Texas City) - See *Texas Register* issue dated October 31, 2008.

Rusk County Teachers Federal Credit Union (Henderson) and East Texas Professional Credit Union (Longview) - See *Texas Register* issue dated November 28, 2008.

Workforce Credit Union (Fort Worth) and Tarrant County Credit Union (Fort Worth) - See *Texas Register* issue dated November 28, 2008.

Application to Amend Articles of Incorporation - Withdrawn

Corpus Christi City Employees Credit Union - See *Texas Register* issue dated January 30, 2009

TRD-200900683

Harold E. Feeney

Commissioner

Credit Union Department

Filed: February 18, 2009

East Texas Council of Governments

Request for Proposal for Professional Services

The East Texas Council of Governments (ETCOG) is issuing a Request for Proposal (RFP) for professional services to perform an analysis and manage its benefits package to contain costs. As a result of this RFP, branded services may be developed and offered to its member governments.

The RFP is available at www.etcog.org. Proposals are due to ETCOG by 5:00 p.m. (CST) on March 13, 2009. It is the responsibility of any proposer to review the website periodically for corrections, alterations or answers to questions concerning this RFP.

ETCOG is an equal opportunity employer. Auxiliary Aids and Services are available upon request. Phone number: (903) 984-8641 or TDD (800) 725-2989.

TRD-200900644

David Cleveland

Executive Director

East Texas Council of Governments

Filed: February 13, 2009

Texas Education Agency

Correction of Error

The State Board of Education adopted amendments to 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, in the February 13, 2009, issue of the *Texas Register* (34 TexReg 1056).

Due to a Texas Education Agency error, the word "and" was inadvertently included at the end of §111.34(b)(8)(D). The sentence should read as follows:

(D) find surface areas and volumes of prisms, pyramids, spheres, cones, cylinders, and composites of these figures in problem situations;

TRD-200900696

Notice of Texas Education Agency Secure Environment (TEA SE) Access and Notice of the Grant Writer Designation Form for the 2009-2010 Even Start Family Literacy Competitive Grant

The competitive grant application for the 2009-2010 Even Start Family Literacy Competitive Grant (Even Start) will be available in the Texas Education Agency (TEA) eGrants system with an expected publication date of April 3, 2009. All external customers and users anticipating a need to access the eGrants system to submit a competitive application under the Even Start program, or those who anticipate being part of a

shared services arrangement, must have a username and password for the Texas Education Agency Secure Environment (TEA SE) to access the eGrants system. Participants are encouraged to request TEA SE access no later than March 27, 2009, to obtain a TEA SE username and password in a timely manner.

Any users who have previously applied for an eGrants TEA SE username and password do not need to reapply. However, users are encouraged to review the role previously requested for their eGrants username and password to ensure it is appropriate. If the role is not correct, users will need to submit a new eGrants TEA SE access request form indicating the change in role. If a username and password were assigned to an individual who should no longer have access, please complete the eGrants TEA SE access form to delete system access for that individual.

A TEA SE username and password are required for each user of eGrants, including authorized officials such as superintendents and executive directors who submit grant applications, employees or contractors who will assist in writing/completing applications in eGrants, and grant personnel who will be completing project progress reports in eGrants. For each user, a single TEA SE username and password is valid for all eGrants applications and is not limited to any one specific grant. Privileges listed under a role apply to all grants and progress/results reports.

For information on how to apply for eGrants access and to request a TEA SE username and password, go to <http://ritter.tea.state.tx.us/opge/egrant/>.

As part of the TEA eGrants system, the Grant Writer Assignment (GWA) form has been introduced as a mechanism for identifying users who will have access to view and complete the Even Start grant applications. Due to the competitive nature of some grants, certain users will be designated to have access to a grant application by the superintendent or the organization's authorized official. Only the superintendent or the organization's authorized official may complete the form and must denote agreement with the authorization statement on the bottom of the form before the schedule is complete. In addition to the GWA form, the Applicant Designation and Certification (ADC) form must be submitted in order for designated individuals to gain access to the grant application. The ADC form indicates the maximum amount of funds for which an organization will apply based on the Even Start allocation for the 2009-2010 school year. The information submitted on the form is considered to be binding. Only the users identified on the form will have access to the grant application.

Superintendents or organizations' authorized officials and eGrants TEA SE users can view the instructions for the form at http://maverick.tea.state.tx.us:8080/Guidelines/Template%20Forms/TEMAAA05PP2220_I.pdf.

Description. The objective of the 2009-2010 Even Start program is to help parents become full partners in their children's education; help children reach their full potential as learners; provide literacy training for parents; assist families with parenting strategies in child growth and development and the educational process for children ages birth through 7 years; and coordinate efforts that build on existing community resources. The goal is to help break the cycle of poverty and illiteracy by improving educational opportunities of low-income families by integrating early childhood education, parenting education, and adult education into a unified family-centered program.

Project Dates. The Even Start program will be implemented during the 2009-2010 school year. Applicants should plan for a starting date of no earlier than September 1, 2009, and an ending date of no later than August 31, 2010.

Project Amount. Funding will be provided for approximately 14 projects. Each project will receive a maximum of \$200,000 for the 2009-2010 school year. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities, on general budget approval by the commissioner of education, and on appropriations by the U.S. Congress. This project is funded 90 percent from federal funds and 10 percent from local cost share match, which may be provided from other federal, state, or local sources.

Training Available on Texas Education Telecommunication Network (TETN). TEA is offering training via TETN (TETN Event #34969) on Tuesday, March 31, 2009, from 1:00 p.m. to 3:00 p.m. This training will cover the Even Start grant application and will provide the opportunity for questions and answers. As space is limited, individuals planning to attend the event must reserve seating with their regional education service center.

Further Information. For clarifying information about this notice or the Request for Application (RFA), contact Iris Adams, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. To assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions about the RFA must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlerson.tea.state.tx.us/GrantOpportunities/forms>.

TRD-200900684

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: February 18, 2009



Request for Applications Concerning 2008-2009 Awards of Excellence for Local School Health Advisory Councils (SHACs)

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-112 from all Texas district-level local school health advisory councils (SHACs) and all Texas public charter school SHACs.

Description. The purpose of these grants is to recognize the five most qualified SHACs with a grant award. Additionally, policies and best practices from each SHAC receiving a grant award will be showcased on selected agency web sites and through training as exemplary strategies.

Dates of Project. The Awards of Excellence for Local School Health Advisory Councils grant will be implemented during the 2008-2009 school year. Applicants should plan for a starting date of no earlier than May 15, 2009, and an ending date of no later than November 30, 2009.

Project Amount. Approximately \$10,000 is available to fund Awards of Excellence for Local School Health Advisory Councils during the project period. A maximum of five \$2,000 grants will be awarded, based on application ranking. This project is funded by The Council of State Governments through a grant from the Robert Wood Johnson Foundation in connection with the Southern Collaborative on Obesity Reduction Efforts (SCORE).

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and

validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. Due to the high cost of printing and mailing RFAs, they will no longer be available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact David Nobles, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. To assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact person. Copies of all questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, March 26, 2009, to be eligible to be considered for funding.

TRD-200900685

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: February 18, 2009

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 30, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a

proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 30, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Barr/Principle Builders, LLC; DOCKET NUMBER: 2008-1658-WQ-E; IDENTIFIER: RN105587042; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$900; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Mike Bowman dba Bowman's Mobile Tire Service; DOCKET NUMBER: 2008-1605-MSW-E; IDENTIFIER: RN105503247; LOCATION: Meridian, Bosque County; TYPE OF FACILITY: retail tire service; RULE VIOLATED: 30 TAC §328.56(d)(2), by failing to obtain a scrap tire storage site registration; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Cal Development, Inc. dba Scott Texaco; DOCKET NUMBER: 2008-1603-PST-E; IDENTIFIER: RN101811917; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; and 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of Stage II equipment; PENALTY: \$12,646; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Dean Word Company, Limited; DOCKET NUMBER: 2008-1765-WQ-E; IDENTIFIER: RN101461358; LOCATION: Austin, Travis County; TYPE OF FACILITY: limestone quarry; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: \$17,250; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: ENNIS WEST END, INC. dba Speedmax 1; DOCKET NUMBER: 2008-1707-PST-E; IDENTIFIER: RN101538007; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II

equipment; PENALTY: \$4,388; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2008-1475-AIR-E; IDENTIFIER: RN102553336; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: gasoline bulk storage plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(5)(C)(v), Federal Operating Permit (FOP) Number O-02715, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to disclose a deviation within the semi-annual deviation reporting period and to accurately certify the annual compliance certification; and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O-02715, Special Terms and Conditions Number 7, New Source Review Permit Number 49131, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,599; Supplemental Environmental Project (SEP) offset amount of Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Hamshire Community Water Supply Corporation; DOCKET NUMBER: 2007-0970-MWD-E; IDENTIFIER: RN102335619; LOCATION: Jefferson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(9) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12098003, Monitoring and Reporting Requirements Numbers 7(a) and (b)(i), by failing to report unauthorized discharges; 30 TAC §305.125(1), TPDES Permit Number 12098003, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a) by failing to comply with its permitted effluent limits for dissolved oxygen (DO), ammonia-nitrogen (NH₃N), and flow; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number 12098003, Monitoring and Reporting Requirements Number 1, by failing to submit the discharge monitoring reports; 30 TAC §305.125(1) and TPDES Permit Number 12098003, Monitoring and Reporting Requirements Number 7(c), by failing to report noncompliances which deviate from the permitted effluent limits by more than 40%; 30 TAC §319.7(c) and TPDES Permit Number 12098003, Monitoring and Reporting Requirements Number 3(b), by failing to maintain records at the facility as required by the permit; 30 TAC §305.125(5) and TPDES Permit Number 12098003, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly maintained and operated; 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number 12098003, Operational Requirements Number 5, by failing to maintain a readily accessible flow measuring device; 30 TAC §305.125(6) and TPDES Permit Number 12098003, Permit Conditions Number 1(c), by failing to submit requested information regarding efforts taken to resolve a citizen complaint; TPDES Permit Number 12098003, Permit Conditions Number 2(g) and the Code, §26.121(a), by failing to prevent unauthorized discharges of wastewater; and 30 TAC §305.126(a) and TPDES Permit Number 12098003, Operational Requirements Number 8(a), by failing to initiate engineering and financial planning for facility expansion and/or upgrades when the effluent daily average flow measurements reached 75% of its permitted daily average flow limit; PENALTY: \$46,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: JWR-HO, L.P.; DOCKET NUMBER: 2008-1705-MWD-E; IDENTIFIER: RN102915378; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.42(a) and the Code, §26.121(a)(1), by failing to obtain a

TPDES permit as required; PENALTY: \$3,760; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: City of Kennard; DOCKET NUMBER: 2008-1710-MWD-E; IDENTIFIER: RN102078169; LOCATION: Houston County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011474001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to maintain compliance with the permit effluent limits; 30 TAC §305.125(1) and TPDES Permit Number WQ0011474001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notification reports for effluent violations that deviated from the permitted effluent limits by more than 40%; 30 TAC §319.7(a) and TPDES Permit Number WQ0011474001, Monitoring and Reporting Requirements Number 3(c)(ii), by failing to maintain records of monitoring activities; and 30 TAC §305.125(5), TPDES Permit Number WQ0011474001, Permit Conditions Number 2.d, by failing to prevent an unauthorized discharge of sludge; PENALTY: \$8,745; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: City of Madisonville; DOCKET NUMBER: 2008-1703-MWD-E; IDENTIFIER: RN101719821; LOCATION: Madison County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number WQ0010215001, Sludge Provisions, by failing to timely submit the annual sludge report; and 30 TAC §305.125(1), TPDES Permit Number WQ0010215001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids (TSS) and NH₃N; PENALTY: \$6,500; SEP offset amount of \$5,200 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Maximus Coffee Group, LP; DOCKET NUMBER: 2008-1619-AIR-E; IDENTIFIER: RN100214931; LOCATION: Houston, Harris County; TYPE OF FACILITY: coffee processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Air Operating Permit Number O-01018, GTC, and THSC, §382.085(b), by failing to timely submit the deviation report; PENALTY: \$1,400; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: City of Point; DOCKET NUMBER: 2008-1715-MWD-E; IDENTIFIER: RN101720381; LOCATION: Rains County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010964002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS and five-day biochemical oxygen demand; 30 TAC §305.125(17) and TPDES Permit Number WQ0010964002, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010964002, Monitoring and Reporting Requirements Number 1, by failing to submit effluent monitoring results at the intervals specified in the permit; PENALTY: \$11,524; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Dale K. Farrow dba Reclamation Contractors of Texas; DOCKET NUMBER: 2008-1785-WQ-E; IDENTIFIER: RN105598031; LOCATION: Cherokee County; TYPE OF FACILITY: industrial mining operation; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with mining activities; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Audra Benoit, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: City of San Antonio; DOCKET NUMBER: 2008-1672-EAQ-E; IDENTIFIER: RN105594287; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: city park; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan; PENALTY: \$2,250; SEP offset amount of \$1,800 applied to Audubon Society-Mitchell Lake Project; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2008-1173-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Number 78962, General Condition Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to report the emissions event that occurred on April 16, 2008 to May 1, 2008 within 24 hours of discovery; PENALTY: \$84,024; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200900657

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 17, 2009



Notice of Water Quality Applications

The following notices were issued during the period of February 5, 2009 through February 12, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF MORAN has applied for a renewal of Permit No. WQ0011420001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day via surface irrigation of 10 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1,500 feet east of the intersection of State Highway 6 and Farm-to-Market Road 576 on the east bank of Post Oak Creek in the City of Moran in Shackelford County, Texas.

WILLIAM DONALD SMITH has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014900001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per

day. The facility was previously permitted under TPDES Permit No. WQ0014506001 which expired on March 1, 2007. The facility is located at 6901 Ramona Road, approximately 100 feet southwest of the intersection of Ramona Road and Vogel Creek in Harris County, Texas.

CITY OF GATESVILLE has applied for a renewal of TPDES Permit No. WQ0010176003, which authorizes the discharge of treated water treatment plant filter backwash water at a daily average flow not to exceed 250,000 gallons per day. The facility is located one mile east of the intersection of Texas Highway 184 and Bell County Road (22240 Owl Creek Road) being six miles south of the intersection of Texas Highways 184 and 36 in Bell County, Texas.

ANTHONY FOREST PRODUCTS COMPANY which operates Anthony Forest Products, has applied for a renewal of TPDES Permit No. WQ0003811000, which authorizes the discharge of wet decking wastewater, boiler blowdown, truck washwater, process area and nonprocess area storm water runoff on an intermittent and flow variable basis via Outfall 001; process area and nonprocess area storm water runoff and fire control water on an intermittent and flow variable basis via Outfall 002; and process area and nonprocess area storm water runoff on an intermittent and flow variable basis via Outfall 003. The draft permit authorizes the discharge of wet decking wastewater, truck washwater, process area and nonprocess area storm water runoff on an intermittent and flow variable basis via Outfall 001; boiler blowdown and process area and nonprocess area storm water runoff and fire control water on an intermittent and flow variable basis via Outfall 002; and process area and nonprocess area storm water runoff on an intermittent and flow variable basis via Outfall 003. The facility is located on State Highway 43, approximately 0.5 mile northeast of the intersection of State Highway 77 and 43, adjacent to the Texas and Pacific Railroad track in the City of Atlanta, Cass County, Texas.

FREESTONE POWER GENERATION LP AND CALPINE OPERATING SERVICES COMPANY INC which operates the Freestone Power Generation Plant, a combined cycle electric power generation facility has applied for a major amendment to TPDES Permit No. WQ0004298000 to authorize the use of EPA approved method for free available chlorine, and to allow simultaneous multi-unit chlorination and continuous chlorination with de-chlorination during period of continuous chlorination for discharges via Outfall 001. The current permit authorizes the discharge of cooling tower blowdown, low volume wastes, and storm water at a daily average not to exceed 820,000 gallons per day via Outfall 001. The facility is located on the east side of State Highway 488, approximately 0.9 mile northeast of the intersection of State Highway 488 and County Road 1124, and 12 miles northeast of the City of Fairfield, Freestone County, Texas.

CITY OF SMITHVILLE has applied for a renewal of TPDES Permit No. WQ0010286003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located 0.8 mile east of the City of Smithville city limit and approximately 2.3 miles east of the intersection of State Highway 71 (now Loop 230) and State Highway 95 in Bastrop County, Texas.

CITY OF MINERAL WELLS has applied for a renewal of TPDES Permit No. WQ0010585004 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,260,000 gallons per day. The facility is located approximately 1,700 feet northwest of the intersection of U.S. Highway 180 and Rock Creek in Parker County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Permit No. WQ0011246001 and requests that the method of disposal

be changed from irrigation to evaporation. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,200 gallons per day via an evaporation/storage pond system with a total surface area of 1.9 acres and a total capacity of 5.7 acre-feet. The wastewater treatment facility and disposal site are located near the confluence of the Paluxy River, and Opossum Branch within Dinosaur Valley State Park, approximately 1.2 miles northwest of the intersection of State Highway 205 and State Highway-Park Road 59 and approximately four miles west-northwest of the intersection (in the City of Glen Rose) of U.S. Highway 67 and Farm-to-Market Road 56 in Somervell County, Texas. The wastewater treatment facility and disposal site are located in the drainage area of Paluxy River/North Paluxy River in Segment No. 1229 of the Brazos River Basin.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 116 has applied for a renewal of TPDES Permit No. WQ0013976001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 1003 1/2 FM 2759, along the west side of Crabb River Road, approximately 4200 feet south of U.S. Highway 59 in the City of Richmond in Fort Bend County, Texas.

FORT BEND MUNICIPAL UTILITY DISTRICT NO 116 has applied for a renewal of TPDES Permit No. WQ0014140001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located at 5323 1/2 Carta Valley, on Rabbs Bayou 5,000 feet northwest of the intersection of Crabb River Road (Farm-to-Market Road 2759) and Farm-to-Market Road 762, and 10,400 feet east of the intersection of U.S. Highway 59 and Farm-to-Market Road 762, in the City of Richmond in Fort Bend County, Texas.

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014243001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility will be located three miles northeast of the intersection of State Highway 359 and State Highway 723 in Fort Bend County, Texas.

SOUTHWEST MILAM WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014508001, which authorizes the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 13,000 gallons per day. The facility is located on the west side of County Road 360, approximately 1,700 feet south of U.S. Highway 79, 6 1/2 miles east of Rockdale in Milam County, Texas.

HYAS CORPORATION has applied for a renewal of TPDES Permit No. WQ0014571001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility will be located approximately 550 feet south of Interstate Highway 10 and 2200 feet east of Igloo Road in Waller County, Texas.

CITY OF WINDTHORST has applied for a new permit, Proposed Permit No. WQ0014915001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via surface irrigation of 60 acres of non-public access agricultural land. The facility was previously permitted under Permit No. WQ0011399001 which expired December 01, 2007. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1,600 feet west of U.S. Highway 281 and one mile north of the intersection of U.S. Highway 281 and State Highway 25 in Archer County, Texas.

EAGLE STAR INVESTMENTS LLP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Per-

mit No. WQ0014918001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility will be located approximately 1,800 feet northeast of the intersection of Woodlands Parkway and Farm-to-Market Road 2978 in Montgomery County, Texas.

SOUTHERN HORIZONS LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014922001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility will be located approximately 100 linear feet south of the intersection of Highway 59 and King Port Drive in Montgomery County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200900692

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 18, 2009



Notice of Water Rights Application

Notice issued February 13, 2009

APPLICATION NO. 12390; XTO Energy, Inc., Applicant, 6141 Paluxy Drive, Tyler, Texas 75703, has applied for a Temporary Water Use Permit to divert and use not to exceed 720 acre-feet of water within a three-year period from the Sabine River, Sabine River Basin for mining purposes in Panola County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on October 20, 2008. Additional information and fees were received on December 18, 2008. The application was declared administratively complete and accepted for filing on January 6, 2009. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by March 3, 2009.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200900693

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 18, 2009



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on January 9, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Tanvir A. Malik dba Malik Exxon; SOAH Docket No. 582-07-3621; TCEQ Docket No. 2005-1953-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Tanvir A. Malik dba Malik Exxon on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200900694

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 18, 2009



Texas Facilities Commission

Request for Proposals #303-9-11138

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-9-11138. TFC seeks a ten (10) year lease of approximately 3,839 square feet of office space in Garland/Mesquite, Dallas County, Texas.

The deadline for questions is March 6, 2009 and the deadline for proposals is March 13, 2009 at 3:00 p.m. The award date is April 15, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=81012.

TRD-200900688

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 18, 2009



Request for Proposals #303-9-11205

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-9-11205. TFC seeks a five (5) or ten (10) year lease of approximately 11,508 square feet of office space in Tyler, Smith County, Texas.

The deadline for questions is March 6, 2009 and the deadline for proposals is March 17, 2009 at 3:00 p.m. The award date is April 15, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=81019.

TRD-200900689

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 18, 2009



Request for Proposals #303-9-11207

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-9-11207. TFC seeks a five (5) or ten (10) year lease of approximately 9,994 square feet of office space in Tyler, Smith County, Texas.

The deadline for questions is March 6, 2009 and the deadline for proposals is March 17, 2009 at 3:00 p.m. The award date is April 15, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=81021.

TRD-200900674

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 17, 2009



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services (CMS) a request to amend the State of Texas Access Reform + PLUS (STAR+PLUS) program, a 1915(b) waiver program to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

STAR+PLUS is designed for Texans who are elderly or who have a physical or mental disability and qualify for SSI benefits or for Medicaid due to low income. This waiver program integrates delivery of acute and long-term care services through a managed care system. The program serves SSI and SSI-related aged and disabled Medicaid recipients in Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson Counties (Bexar Service Area); Brazoria, Fort Bend, Galveston, Harris, Montgomery, and Waller counties (Harris/Harris Expansion Service Area); Aransas, Bee, Calhoun, Jim Wells, Kleberg, Nueces, Refugio, San Patricio, and Victoria counties (Nueces Service Area); and Bastrop, Burnet, Caldwell, Hays, Lee, Travis and Williamson counties (Travis Service Area).

Currently, the STAR+PLUS program capitation rate includes nursing facility costs. The amendment would exclude nursing facility services from the capitation premium methodology paid to STAR+PLUS managed care organizations.

HHSC also plans to amend the STAR+PLUS contract and rates. This amendment causes no impact to STAR+PLUS members as the amendment does not impact services and the nursing facility providers will continue to submit claims to Texas Medicaid Health Partnership (TMHP).

HHSC is requesting that the waiver amendment be approved beginning March 1, 2009, through August 31, 2010. This waiver maintains cost effectiveness for waiver years 2009 through 2010.

To obtain copies of the proposed waiver, interested parties may contact Carmen Samilpa-Hernandez, Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1128, fax (512) 491-1953, or by e-mail carmen.samilpa-hernandez@hhsc.state.tx.us.

TRD-200900606

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: February 13, 2009



Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit TN No. 09-010, an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2009.

Pursuant to guidance from the Centers for Medicare & Medicaid Services (CMS), the amendment will modify the reimbursement methodology in the Texas Medicaid State Plan for in-home total parenteral hyperalimentation services. CMS has informed HHSC that Medicaid payments for hyperalimentation services cannot be based on a bundled rate; instead, the payments for the hyperalimentation nursing services must be separately reimbursed from the payments for the hyperalimentation nutritional products and associated medical supplies. As of April 1, 2009, Medicaid payment for these services will be unbundled, with the reimbursement for the hyperalimentation nursing services covered

under the currently approved reimbursement methodology for home health services and the reimbursement for the hyperalimentation nutritional products and associated medical supplies covered under the currently approved reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).

The proposed amendment has no estimated fiscal impact for federal fiscal year (FFY) 2009 through FFY 2013 since no rate changes are associated with the implementation of the unbundling of the reimbursement for in-home total parenteral hyperalimentation services.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200900687

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: February 18, 2009



Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of JOHNS EASTERN COMPANY, INC., a foreign third party administrator. The home office is BRADENTON, FLORIDA.

Application of MAXIM INSURANCE SOLUTIONS, LC (using the assumed name of MAXIM INSURANCE ADMINISTRATORS, LLC), a foreign third party administrator. The home office is JEFFERSON CITY, MISSOURI.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200900572

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: February 11, 2009



Texas Lottery Commission

Instant Game Number 1156 "9's in a Line"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1156 is "9'S IN A LINE". The play style for this game is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1156 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1156.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, \$1.00, \$2.00, \$3.00, \$9.00, \$19.00, \$49.00, \$99.00, \$199 and \$900.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1156 - 1.2D

PLAY SYMBOL	CAPTION
2	
3	
4	
5	
6	
7	
8	
9	
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$9.00	NINE\$
\$19.00	NINTN
\$49.00	FRYNIN
\$99.00	NTYNIN
\$199	ONNYNN
\$900	NINHUN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$9.00 or \$19.00.

G. Mid-Tier Prize - A prize of \$49.00, \$99.00 or \$199.

H. High-Tier Prize - A prize of \$900.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1156), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1156-0000001-001.

K. Pack - A pack of "9'S IN A LINE" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last

page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "9'S IN A LINE" Instant Game No. 1156 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "9'S IN A LINE" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals three (3) "9" play symbols in any one row, column or diagonal, the player wins prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain three or more of a kind other than the 9 symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "9'S IN A LINE" Instant Game prize of \$1.00, \$2.00, \$3.00, \$9.00, \$19.00, \$49.00, \$99.00 or \$199, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$49.00, \$99.00 or \$199 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "9'S IN A LINE" Instant Game prize of \$900, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "9'S IN A LINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "9'S IN A LINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "9'S IN A LINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 1156. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1156 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	2,016,000	10.00
\$2	1,344,000	15.00
\$3	537,600	37.50
\$9	201,600	100.00
\$19	67,200	300.00
\$49	25,200	800.00
\$99	5,628	3,582.09
\$199	3,360	6,000.00
\$900	252	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1156

without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1156, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200900655
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 17, 2009



Instant Game Number 1184 "\$50,000 Cash Winfall"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1184 is "\$50,000 CASH WINFALL". The play style is "key symbol match with multipliers".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1184 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1184.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: APPLE SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, STRAWBERRY SYMBOL, BOW SYMBOL, CENTS SYMBOL, CHEST SYMBOL, CLOVER SYMBOL, STACK OF COINS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, EMERALD SYMBOL, FISTFULL OF MONEY SYMBOL, GRAPES SYMBOL, LEMON SYMBOL, MELON SYMBOL, MINK SYMBOL, NECKLACE SYMBOL, PIGGY BANK SYMBOL, PINEAPPLE SYMBOL, POT OF GOLD SYMBOL, RING SYMBOL, ROLL OF DOLLAR BILLS SYMBOL, SAFE SYMBOL, HORSESHOE SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, 7 SYMBOL, WALLET SYMBOL, 1X SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1184 - 1.2D

PLAY SYMBOL	CAPTION
APPLE SYMBOL	APPLE
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
STRAWBERRY SYMBOL	BERRY
BOW SYMBOL	BOW
CENTS SYMBOL	CENTS
CHEST SYMBOL	CHEST
CLOVER SYMBOL	CLOVER
STACK OF COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DMND
EMERALD SYMBOL	EMRLD
FISTFULL OF MONEY SYMBOL	FISTFUL
GRAPES SYMBOL	GRAPES
LEMON SYMBOL	LEMON
MELON SYMBOL	MELON
MINK SYMBOL	MINK
NECKLACE SYMBOL	NKLACE
PIGGY BANK SYMBOL	PIGBNK
PINEAPPLE SYMBOL	PINAPLE
POT OF GOLD SYMBOL	POT
RING SYMBOL	RING
ROLL OF DOLLAR BILLS SYMBOL	ROLL
SAFE SYMBOL	SAFE
HORSESHOE SYMBOL	SHOE
DOLLAR SIGN SYMBOL	SIGN
STAR SYMBOL	STAR
7 SYMBOL	SVN
WALLET SYMBOL	WALLET
1X SYMBOL	WINX1
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1184), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1184-0000001-001.

K. Pack - A pack of "\$50,000 CASH WINFALL" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$50,000 CASH WINFALL" Instant Game No. 1184 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$50,000 CASH WINFALL" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR SYMBOLS to any of the WINNING SYMBOLS, the player wins the PRIZE shown for that symbol. The player then scratches the MYSTERY MULTIPLIER for a chance to win 2X, 5X, 10X or 20X the total PRIZE won on this ticket! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The top prize will appear on every ticket unless otherwise restricted.

- C. No more than four matching non-winning prize symbols.
- D. No duplicate non-winning YOUR SYMBOLS play symbols on a ticket.
- E. No duplicate WINNING SYMBOLS play symbols on a ticket.
- F. The 1X MYSTERY MULTIPLIER play symbol will appear on every winning ticket that is not designated by the prize structure to contain the 2X, 5X, 10X or 20X MYSTERY MULTIPLIER play symbols.
- G. Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$50,000 CASH WINFALL" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$50,000 CASH WINFALL" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$50,000 CASH WINFALL" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or

- 5. in default on a loan guaranteed under Chapter 57, Education Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$50,000 CASH WINFALL" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$50,000 CASH WINFALL" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1184. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1184 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	480,000	12.50
\$10	600,000	10.00
\$20	280,000	21.43
\$50	57,500	104.35
\$100	11,950	502.09
\$200	2,500	2,400.00
\$500	2,300	2,608.70
\$1,000	300	20,000.00
\$5,000	16	375,000.00
\$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.18. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1184 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1184, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200900656

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: February 17, 2009



North Central Texas Council of Governments

Request for Proposals for the North Texas Aviation Education Initiative: Development and Implementation

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Government Code, Chapter 2254.

The NCTCOG is requesting written proposals from consultant firm(s) to assist NCTCOG in carrying out the North Texas Aviation Education Initiative: Development and Implementation. This initiative is being

initiated by NCTCOG from a widely recognized need for additional aviation workforce regionally and nationally. Despite its preeminence in the aviation industry, and the demonstrated need to train additional aviation professionals, the region lacks both a public university with a comprehensive four-year college program for students who would like to pursue an aviation career and a clear path for students interested in aviation careers. The need for a comprehensive public education aviation program was first documented by a Texas Transportation Institute Report (2003) and later by NCTCOG's New Technology and Industry Trends Report (2007). The goal of this initiative is to coordinate with regional industry and academic partners to form a complete and thorough aviation academic program and implement it in the region. This initiative will address the needs at various academic levels including university, community college, trade school, high school, and junior high as well as their combination with existing regional resources and industry outreach efforts.

Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, March 27, 2009, to Rachel Wiggins, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200900695

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: February 18, 2009



Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 9, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36678 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Little Elm and Terrell, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36678.

TRD-200900594

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 12, 2009



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on February 11, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Inc. d/b/a CMA Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36691 before the Public Utility Commission of Texas.

The requested expanded CFA service area includes the City Limits of Giddings, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36691.

TRD-200900671

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 17, 2009



Notice of a Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order with the Public Utility Commission of Texas on February 13, 2009.

Docket Style and Number: Petition of Texas Utility Solutions LLC for Declaratory Order of Eligibility as a Transmission Service Customer, Docket Number 36701.

The Application: Texas Utility Solutions is registered with the commission as a power marketer in accordance with P.U.C. Substantive Rule §25.105. The issue presented for the commission is whether Texas Utility Solutions is defined to be eligible as a "Transmission service customer" in accordance with PURA §35.004 and P.U.C. Substantive Rule §25.5.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36701.

TRD-200900697

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 18, 2009



Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on February 13, 2009, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of the Sabina Exchange (GVTC) and the Boerne Exchange (Verizon). Docket Number 36700.

The Application: The minor boundary amendment is being filed to realign the boundary between the Sabina exchange of GVTC and the Boerne exchange of Verizon. Verizon has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by March 9, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-

impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36700.

TRD-200900672

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 17, 2009

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 11, 2009, Ohio First Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60772. Applicant intends to reflect a change in ownership/control.

The Application: Application of Ohio First Communications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36687.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 4, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36687.

TRD-200900669

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 17, 2009

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 11, 2009, First Communications, Inc., filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60218. Applicant intends to reflect a change in ownership/control.

The Application: Application of First Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36688.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 4, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36688.

TRD-200900670

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 17, 2009

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Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on February 11, 2009, for designation as a resale eligible telecommunications provider in the State of Texas to receive funds from the Texas Universal Service Fund for reimbursement of the discounts provided through the Lifeline program, pursuant to Substantive Rule §26.419.

Docket Title and Number: Petition of VoicePac Prepaid, LLC for Designation as a Resale Eligible Telecommunications Provider. Docket Number 36690.

The Application: VoicePac Prepaid, LLC seeks ETP designation to become eligible to receive funds from the Texas Universal Service fund for reimbursement of the discounts provided through the Lifeline program.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by March 5, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 36690.

TRD-200900641

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 13, 2009

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Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 9, 2009, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of True Electric, LLC d/b/a New Century Power for Retail Electric Provider (REP) Certification, Docket Number 36682 before the Public Utility Commission of Texas.

Applicant's requested service area includes the geographic area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 2, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36682.

TRD-200900595

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 12, 2009

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Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 9, 2009, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of 10K Energy, LLC for Retail Electric Provider (REP) Certification, Docket Number 36685 before the Public Utility Commission of Texas.

Applicant's requested service area is the service area of specific transmission and distribution utilities and/or municipal utilities or electric cooperatives in which competition is offered as follows: Oncor territories, CenterPoint territories, AEP Central and North territories, and Texas-New Mexico Power territories.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 6, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36685.

TRD-200900597
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 12, 2009



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 13, 2009, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of ten thousand-blocks of numbers in the Satsuma rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 36702.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 4, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36702.

TRD-200900673
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 2009



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on February 9, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after February 19, 2009.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Operator Assistance - Operator Ringback Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 36684.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 36684. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 36684.

TRD-200900596
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 12, 2009



The Texas A&M University System

Award Notification

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System has entered into a consulting contract for asbestos consulting services. The consultant will provide asbestos program design and air monitoring services in conjunction with the renovation of the Memorial Student Center on the campus of Texas A&M University located in College Station, Texas.

The Name and Address of Consultant is as follows: Austin Environmental Inc., P.O. Box 3725, Bryan, Texas 77805.

The A&M System will pay an amount of \$77,600.00. The contract will begin on February 16, 2009 and shall terminate in eighteen months unless renewed for additional months up to September 15, 2010.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845, Voice: (979) 458-6410, E-mail: dbarwick@tamu.edu.

TRD-200900598
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: February 12, 2009



Stephen F. Austin State University

Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes

this notice of amendment of the University's contract with consultant Marsha Jacobson, 3217 Bryan Street, Nacogdoches, Texas 75965. The original contract was in the sum of \$28,000 for five years, not to exceed \$140,000, with a beginning date of September 11, 2007 and ending date of July 1, 2012. The contract award was published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7550). The contract was amended to increase the consultant's time from 56 days each year to approximately 70 days per year for the then remaining four years of the project. This amendment increased the contract cost to \$35,000 per year for years two through five for an additional cost of \$28,000, which increased the total cost of the contract to \$168,000. This amendment was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5425). The contract will be amended to increase the consultant's time from approximately 70 days per year to 76 days per year, for an annual total not to exceed \$38,000 including travel. This increases the contract an additional \$12,000 per year, for a total of \$180,000.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant.

For further information, please contact the Department of Secondary Education and Educational Leadership at (936) 468-2908.

TRD-200900567

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: February 11, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).